

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





ORIGINAL

74-2504

**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

JOHN E. CUFF,

*Plaintiff-Appellee,*

*against*

THOMAS W. GLEASON, JOHN BOWERS, LESTER GARDNER, VINCENT COLUCCI, WILLIAM P. LYNCH, WILLIAM MURPHY, ANTHONY SCOTTO, WALTER L. SULLIVAN, JOSEPH VINCENZINO and FRED R. FIELD, JR., Trustees of the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, and J. J. DICKMAN, R. F. CHIARELLO, JAMES G. COSTELLO, C. H. C. EVERHARD, DAGFINN GUNNARSHAUG, JOSEPH F. McGOLDRICK, F. X. McQUADE, MICHAEL E. MAHER, RUSSEL W. NEITZ and DONALD J. SCHMIDT, Trustees of the NEW YORK SHIPPING ASSOCIATION, INC., together constituting the joint Board of Trustees of THE NEW YORK SHIPPING ASSOCIATION-INTERNATIONAL LONGSHOREMEN'S ASSOCIATION PENSION PLAN AND NYSA-ILA PENSION TRUST FUND,

*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT

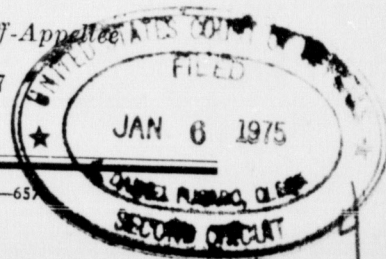
**JOINT APPENDIX**

THOMAS W. GLEASON  
17 Battery Place, Suite 600  
New York, N.Y. 10004  
(212) 425-3240

LORENZ, FINN, GIARDINO & LAMBOS  
25 Broadway  
New York, N.Y. 10006  
(212) 943-2475

*Co-Counsel to the Defendants-Appellants, NYSA-ILA Pension Trust Fund and its Board of Trustees*

MELTZER & FISHMAN  
*Attorneys for Plaintiff-Appellee*  
225 Broadway  
New York, N.Y. 10007  
(212) BA 7-1980





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### Relevant Docket Entries.

| DATE    | FILINGS—PROCEEDINGS   |
|---------|---|
| 4-30-74 | Petition for removal filed. with bond for removal attached. (Sup. Ct./Kings)  |
| 4-30-74 | Notice of motion ret 6/11/74 for an order dismissing the complaint and granting summary judgment in favor of the deft filed. (Affidavit in support of motion annexed) |
| 5- 7-74 | Pltff's demand for trial by jury filed.   |
| 5-17-74 | Notice of cross motion for declaratory judgment ret. 6-11-74 @ 10:00 A.M. and memorandum of law filed.  |
| 5-31-74 | By BRUCHHAUSEN, J.—Order filed dated 5/31/74 that the return day for the Motion to Dismiss the complaint is extended to June 27, 1974                                 |
| 6-27-74 | Before BRUCHHAUSEN, J.—Case called. Deft's motion for dismissal submitted. Decision reserved.   |
| 7- 5-74 | Supplemental affidavit of Anthony Aurigemma to deft's motion to dismiss complaint filed.  |
| 7- 5-74 | Defts' memorandum of law filed.   |
| 7-12-74 | By BRUCHHAUSEN, J.—Order dtd. 7-12-74 extending return date for motion to dismiss complaint & motion for summary judgment to 7-11-74 filed.                           |
| 7-19-74 | Statement pursuant to Rule 9(g) filed.  |
| 7-24-74 | Pltff's reply memorandum of law filed.  |
| 7-24-74 | By BRUCHHAUSEN, J.—Order dtd. 7-18-74 adjding cross-motion to 8-2-74 filed.   |

*Relevant Docket Entries.*

| DATE     | FILINGS—PROCEEDINGS  |
|----------|--|
| 10-25-74 | By BRUCHHAUSEN, J.—Memorandum and order dtd. 10-16-74 granting plttf's motion for summary judgment filed. Settle order on three days' notice.  |
| 10-29-74 | Notice of motion for an order staying execution of judgment ret 11-29-74 at 10 A.M. filed.   |
| 10-29-74 | By BRUCHHAUSEN, J.—Order and Judgment dated Oct. 29, 1974 filed that deft's motion to dismiss and for summary judgment is denied and that plttf's motion purs. to Rule 56 is granted, that plttf is entitled to disability benefits from defts pension plan at the rate of \$400.00 per month commencing Sept. 1, 1972, for a total amount through and including Oct. 1, 1974 of \$10,400.00 with interest of \$702.00 for a total of \$11,102.00 tog. with costs and disbursements of this action to be taxed by the Clerk of this court in the amount of \$20.00, for a total of \$11,122.00, etc. P.C. mailed to the attys. |
| 11- 7-74 | Notice of appeal with annexed cost bond and supersedeas bond filed. Duplicate of Appeal & duplicate of docket entries mailed to C of A. jn   |
| 12- 2-74 | Record on appeal certified and handed to Dean Daszkowski for delivery to C of A.   |

**Plaintiff's Verified Complaint.**

Plaintiff, by his attorneys, MELTZER & FISHMAN, complaining of the defendants, respectfully alleges:

1) At all times herein mentioned, plaintiff was and still is a resident of the County of Kings, City and State of New York; and was born on July 6, 1915.

2) At all times herein mentioned, the New York Shipping Association, Inc., was and still is a corporation existing under and by virtue of the laws of the State of New York.

3) At all times herein mentioned, the International Longshoremen's Association was and still is a labor union whose members are generally employed in the longshore industry and work in and about the Port of Greater New York and vicinity.

4) At all times herein mentioned, plaintiff became a member of the International Longshoremen's Association (heretofore called ILA) on or about 1937 continuing said membership from approximately 1937 until on or about October 1955. On or about October 1955 plaintiff was suspended from the ILA and remained so suspended until his reinstatement in 1958.

5) Plaintiff remained a member in good standing from the time of his reinstatement until the present time and continues to be a member of the ILA to date.

6) At all times herein mentioned, on or about 1949 the New York Shipping Association and ILA, through a system of collective agreements created a Plan whose name is New York Shipping Association-International Longshoremen's Association Pension Plan (hereinafter called Plan),

*Plaintiff's Verified Complaint.*

by which there was created the NYSA-ILA Pension Trust Fund.

7) The said Plan and Fund are administered by a joint Board of Trustees, the Board of Trustees of the International Longshoremen's Association by Thomas W. Gleason, John Bowers, Lester Gardner, Vincent Colucci, William P. Lynch, William Murphy, Anthony Scotto, Walter L. Sullivan, Joseph Vincenzino and Fred R. Field, Jr.; and the Board of Trustees of the New York Shipping Association, Inc., by J. J. Dickman, R. F. Chiarello, James G. Costello, C. H. C. Everhard, Dagfinn Gunnarshaug, Joseph F. McGoldrick, F. X. McQuade, Michael E. Maher, Russel W. Neitz and Donald J. Schmidt.

8) The Plan provides, *inter alia*, for the payment from the fund, of pensions to the members of ILA for retirement, for death and for disability, upon the union member meeting certain stated requirements.

9) On or about March 1, 1972, plaintiff became permanently and totally disabled, which permanent and total disability has remained continuously in effect from said date until the present and which permanent and total disability is continuing.

10) Article III Section 7, states in pertinent part:

"Any employee who is forty (40) years or older on or after January 1, 1940, who has been employed in the industry for a continuous period of not less than fifteen (15) years, and who during such continuous period has been employed in the industry a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being



*Plaintiff's Verified Complaint.*

employed in the industry at the time he sustains such disability, shall be entitled to a pension."

11) Plaintiff has in all respects met the requirements set forth in the immediately preceding paragraph, and has duly applied for a disability pension.

12) Pursuant to the provisions of the Plan, plaintiff should have begun receiving the sum of \$400.00 monthly effective September 1, 1972, said amount representing the sum for permanent and total disability provided for in the plan.

13) The defendant, by letter dated March 29, 1973 denied plaintiff's application for such disability pension.

WHEREFORE, plaintiff demands judgment against the defendant as follows:

1) For declaratory relief declaring that plaintiff is entitled to a disability pension on the basis of a disability incurred on March 1, 1972;

2) For judgment awarding to plaintiff effective September 1, 1972, the sum or sums of money to which plaintiff is entitled with interests, costs and disbursements;

3) For such other and further relief as to this Court may seem just and proper.

MELTZER & FISHMAN  
Attorneys for Plaintiff

(Verified by John E. Cuff, March 6, 1974.)

**Defendants' Notice of Motion for Order Dismissing  
Complaint and for Summary Judgment.**

SIRS:

PLEASE TAKE NOTICE that upon the annexed motion, affidavit of Anthony Aurigemma, sworn to on the 29th day of April, 1974, and upon the pleadings and proceeding heretofore had herein, the undersigned will move this Court at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 11th day of June, 1974, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order Dismissing the Complaint and granting Summary Judgment pursuant to Rule 12(b) and Rule 56 of the Federal Rules of Civil Procedure.

Dated: April 30, 1974  
New York, N. Y.

Yours, etc.

THOMAS W. GLEASON  
Attorney for Defendant,  
International Longshoremen's  
Association, AFL-CIO

LORENZ, FINN, GIARDINO & LAMBOS  
Attorneys for Defendant,  
New York Shipping  
Association, Inc.

To:

MELTZER & FISHMAN, Esqs.  
Attorneys for Plaintiff

**Defendants' Notice of Motion for Order Dismissing  
Complaint and for Summary Judgment.**

The Defendants, New York Shipping Association-International Longshoremen's Association Pension Trust Fund and Pension Plan ("Fund and Plan" respectively) the Trustees thereof named in the caption in their capacity as Trustees of the Fund and Plan, move in this Court to Dismiss the Summons and Verified Complaint and grant Summary Judgment pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure; on the ground that the Plaintiff has failed to state a claim upon which relief can be granted in that:

- (a) he was not employed in the industry for a continuous period of not less than fifteen (15) years immediately prior to his application for a disability pension; and
- (b) he had a break in service from 1956 to 1965, i.e. during the period 1956 to 1963 he had no earnings in the industry.
- (c) The Trustees resolved, based on the foregoing, that Plaintiff is not entitled to a disability pension, and such decision is conclusive, final and binding.

Dated: New York, New York, April 30, 1974.

THOMAS W. GLEASON  
Attorney for Defendant,  
International Longshoremen's  
Association, AFL-CIO

LORENZ, FINN, GIARDINO & LAMBOS

By: RICHARD P. LERNER  
Attorneys for Defendant,  
New York Shipping Association

To: MELTZER & FISHMAN  
Attorneys for Plaintiff

**Affidavit of Anthony Aurigemma, in Support of  
Motion to Dismiss and Motion for Summary  
Judgment.**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

ANTHONY AURIGEMMA, being duly sworn, deposes and says:

1. I am employed by the NYSA-ILA Pension Trust Fund, a Defendant in the above entitled action, as the Pension Director and have held such position for 17 years. I am fully familiar with all the facts and circumstances herein.

2. This affidavit is submitted in support of Defendant's Motion to Dismiss the Summons and Verified Complaint and grant Summary Judgment pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure; on the ground that the Plaintiff has failed to state a claim upon which relief can be granted in that:

- (a) he was not employed in the industry for a continuous period of not less than fifteen (15) years immediately prior to his application for a disability pension; and
- (b) he had a break in service from 1956 to 1965, i.e. during the period 1956 to 1963 he had no earnings in the industry; and
- (c) the Trustees resolved, based on the foregoing, that Plaintiff is not entitled to a disability pension, and such decision is conclusive, final and binding.

3. On or about the 10th day of April, 1974, an action was commenced against Defendants, New York Shipping



*Affidavit of Anthony Aurigemma.*

Association-International Longshoremen's Association Pension Trust Fund and Pension Plan ("Fund and Plan" respectively) and the Trustees thereof named in the caption in their capacity as Trustees of the Fund and Plan, wherein Plaintiff, John E. Cuff, erroneously alleges that he is entitled to a disability pension.

4. The New York Shipping Association-International Longshoremen's Association Pension Plan and Pension Trust Fund is a pension fund originally established on December 8, 1950 under the collective bargaining agreement of 1949, the provisions of which bind the NYSA and the ILA. The Plan is funded solely by Employer contributions pursuant to the provisions of the Collective Bargaining Agreement (see Exhibit A) between the NYSA and the ILA. Changes in the provisions of the Plan concerning eligibility, amount of pension, etc., have been and continue to be the subject of negotiations between the NYSA and the ILA.

5. Plaintiff, a checker, is a member of Local 1, ILA and as such is bound by all NYSA-ILA contracts including the fringe benefit funds established pursuant thereto and more specifically the provisions of the NYSA-ILA Pension Plan (attached hereto as Exhibit B).

6. On the face of the aforementioned Summons and Verified Complaint, the action is for a disability pension on the basis of a disability allegedly to have been incurred on March 1, 1972.

7. Plaintiff, John E. Cuff, on May 23, 1972, made an application for a disability pension. A medical statement dated May 20, 1972, from Dr. John C. Howard which stated that Mr. Cuff was totally disabled was submitted to the

*Affidavit of Anthony Aurigemma.*

Pension office in support of Plaintiff's disability pension application.

8. Defendants concede that Plaintiff was totally disabled, however Defendants have determined that Plaintiff is not entitled to a disability pension inasmuch as the Pension Plan provides that in order to be so entitled the applicant must:

- (a) be employed in the industry at the time he sustains such disability; and
- (b) at the time of his application he must have been employed in the industry for a continuous period of not less than fifteen (15) years, immediately prior to his application for such pension; and
- (c) for an employee to have been employed in the industry for a continuous period of not less than fifteen (15) years, he must have worked in the industry not less than 400 hours a year for thirteen (13) continuous years.
- (d) An employee will receive credit towards his pension eligibility for any year said employee works not less than 400 hours; any year in which said employee works less than 400 hours is deemed a break in service and said employee will not receive credit for that year towards his pension eligibility.
- (e) At the discretion of the Trustees of the Fund, an employee is entitled to no more than two years of less than 400 hours for which he will be given credit towards his pension eligibility, *provided that* such "sabbatical" time is within, or at the termination of said fifteen (15) year period, as aforesaid, and not at the outset of said fifteen (15) year period.

*Affidavit of Anthony Aurigemma.*

9. Plaintiff did not comply with the aforesaid eligibility requirements in that:

- (a) At the time of his disability application Plaintiff was employed in the industry from 1964 to 1972 which is only seven (7) creditably years towards his disability pension; and
- (b) Plaintiff had a break in service from 1956 to 1965, i.e. no reported earnings in the industry during the period 1956-1963, thus was not continuously employed in the industry for thirteen (13) of the fifteen (15) years immediately prior to his application for such pension; and
- (c) The decision of the Board of Trustees of the Fund and Plan is conclusive, final and binding (Article VII, Section 10).

10. Plaintiff, not having met the eligibility requirements of the Plan is not entitled to a disability pension. This conclusion was reached by the Board of Trustees of the NYSA-ILA Pension Trust Fund on March 28, 1973 (see Exhibit C).

11. No employee covered by the Plan who was ever in a similar situation as the Plaintiff herein has ever received a disability pension under the Plan.

12. Deponent respectfully wishes to bring to the Court's attention, that while Plaintiff was denied a disability pension, as aforesaid, the Trustees of the Fund resolved that he is entitled to a Normal Retirement Pension upon attaining the age of sixty-two in 1977 (see Exhibit D).

(Sworn to by Anthony Aurigemma, April 29, 1974.)

**Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.**

All local conditions under the various NYSA-ILA craft collective bargaining agreements are hereby settled with the following modifications, which together with the provisions of Attachments A and B constitute full and complete settlement of all outstanding issues by the parties:

**A. PENSIONS**

Under the money allocations mentioned in the Master Contract and in accordance with changes in administration set forth below, the following improvements would be made in the Port of Greater New York under existing rules effective April 1, 1972:

**REGULAR PENSION BENEFITS**

For men now in the industry who will become new pensioners under present qualifications and eligibility:

\$400.00 per month regular pension.

Disability pension for from 15 to 25 years of service would be proportioned, as under present plan, starting with \$240.00 monthly for 15 years of service and adding \$16.00 for each additional year to a maximum of \$400.00 per month for 25 years of service.

**EARLY RETIREMENT PENSION BENEFITS FOR MEN  
NOW IN THE INDUSTRY**

In order to lessen the burden on the Port created by payments of guaranteed annual income, an opportunity will be provided to the regular men now in the industry and who are eligible for GAL, to apply for and receive early retirement payments.



*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

ELIGIBILITY

To qualify for the single opportunity provided for early retirement, employees must meet the requirements of either sub-paragraphs (1) or (2) below, *and* the requirements of (3), (4) and (5) below:

(1) 25 years of service in the industry and attained age 55 as of December 31, 1972. Benefit-\$350 per month for life.

(2) 20 years of service in the industry and attained age 50 as of December 31, 1972. Benefit-\$300 per month for life.

(3) Employees must actually be covered by NYSA-ILA Contracts and be working for NYSA employers, and be eligible for GAI benefits as of April 1, 1972.

(4) Such employees must actually apply for early retirement not later than June 1, 1972.

(5) Applicants for early retirement who are on an active employer's list must be replaced, under normal seniority rules by a qualified GAI eligible who is not on a list.

Widows of early retirement pensioners shall be qualified for a widow's pension when the early retiree would have reached normal retirement age.

Pensioners who retired prior to April 1, 1972, under the provisions of expired agreements, to be given an increase of \$25 per month.

The pension contributions provided in the Master Contract shall be used to fund such early retirement through the NYSA—ILA Pension Trust Fund on a 40 year funding basis with interest assumed at  $4\frac{1}{2}\%$  which shall be the same assumptions for all benefits. The above early retire-

*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

ment benefits shall be paid only to men covered by NYSA—ILA contracts.

The pension contributions provided to the NYSA—ILA Pension Trust Fund for the three year period from all employer sources, including the second Container Royalty, shall be not less than \$102,000,000 divided as follows: first contract year—\$31,000,000, second contract year \$34,000,000, third contract year \$37,000,000.

Pension benefits for all men who entered the industry on or after October 1, 1968 (and who are not presently covered by the NYSA—ILA Pension Fund) shall be provided under the terms and conditions of a new plan the terms of which shall be agreed to by the parties within ninety days of this agreement. The funds for this plan are included in the amount provided in the Master Contract.

Pensioners who retire under the terms of this agreement to be covered for full welfare benefits (excluding death benefits and A & H) for the calendar year 1974 only. This provision shall not apply to such pensioners who are covered by any other group plan giving substantially the same benefits.

**B. WELFARE AND CLINICS**

The employers shall make contributions to the Welfare and Clinic Funds on the basis provided for in the Master Contract. The minimum dollar contributions from all employer sources, including the second Container Royalty, which shall be made each year shall be \$21,186,000 in the first year of the contract, \$22,572,000 in the second year of the contract and \$23,958,000 in the third year of the contract. The Trustees shall allocate the Master Contract

*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

welfare contributions to the Welfare and Medical and Clinic Funds in accordance with the needs of the various services and clinics.

C. GUARANTEED ANNUAL INCOME

The parties hereto have resolved the issues relating to the guaranteed annual income in accordance with the provisions set forth in Attachment A, which is made a part hereof, and which provides for a continuation of the guaranteed annual income program providing benefits up to 2080 hours per year at the basic straight-time rate in effect each contract year, under the terms and conditions therein set forth. Except as provided by this provision, and as modified by Attachment A, all other terms and conditions of the expired agreements shall continue in effect.

D. GRIEVANCE MACHINERY

The grievance machinery shall be continued with modifications to provide as follows:

(e) THE FOURTH STEP

(i) The parties shall agree on 5 arbitrators to serve as a panel of arbitrators ("The Panel"), to hear and determine disputes, who shall be immediately available to the parties upon telephonic or telegraphic request whenever immediate arbitration is requested by either party, pursuant to subdivision (ii) below. The parties shall agree upon the 5 arbitrators within 20 days after execution of the agreement, and in the event they are unable to agree upon such selection, the arbitrators shall be designated under the rules of the American Arbitration Association within 30 days thereafter. Pending the designation of the panel either by the parties, or pursuant to the rules of the American Arbitra-

*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

tion Association, the arbitrators under the expired contract shall continue to constitute the panel.

(ii) Either party may, with respect to any grievance, dispute, complaint or claim arising out of or relating to the agreement, (except as provided in Rule 3(h) of the Rules on Containers and Lash) and at any point, waive any and all preliminary steps of the grievance machinery and submit the matter to arbitration ("expedited arbitration"), at any time after a matter has been considered by the NYSA—ILA Contract Board. Such request shall be made in writing by the President of the ILA or the President of NYSA, as the case may be, or their designees. Such writing may be by telegram or a letter hand delivered to the office of the other party. Telephonic or telegraphic notice shall be given at the same time to a member of the panel who shall immediately thereafter (and not later than 24 hours after receipt of such notice) convene an arbitration hearing at such place as he shall determine, including the work place where the dispute arose.

(iii) In the event any party fails to appear at any arbitration, including an expedited arbitration hearing, the party failing to appear shall be deemed to have waived its right to contest its non-participation, and the arbitrator shall proceed forthwith to determine the issue.

(iv) In an expedited arbitration the arbitrator shall issue a short form award at the end of the hearing unless the time to render an award is extended by mutual consent. The arbitrator shall have the right to issue a more detailed decision within 30 days after the rendition of such short form award setting forth the reasons for his award. As to all other arbitrations,



*Exhibit A, Settlement of Port of Greater New York.  
Conditions, Annexed to Foregoing Affidavit.*

the arbitrator shall issue his award as expeditiously as possible. If an award is not rendered within thirty days (unless both parties agree to extend such time period) either party shall have the right to terminate the services of that arbitrator and he shall be replaced in accordance with the procedures set forth in the arbitration article. If the arbitrator is disabled and is thereby prevented from rendering a decision within 30 days, or if he fails to render a decision within 30 days, the parties shall refer the record and briefs to the next arbitrator for decision unless either party objects to such procedure in which event a new and expedited hearing shall be held.

**E. VACATIONS AND HOLIDAYS**

Present vacation and holiday benefits will be continued without change.

Sixteen hour rule for holidays not applicable for men on vacation who notify Seniority Board of absence for vacation in advance or those on NYSA—ILA Welfare Fund, A & H or those on occupational injury compensation in this industry.

**F. TRAVEL TIME**

There shall be no travel time benefit. All travel time provisions under the expired contracts are eliminated. The employers will pay two million dollars per annum for supplemental cash benefits.

**G. ASSESSMENTS**

The method of assessing and collecting hourly and tonnage assessments is set forth in Attachment B and is made a part of this memorandum as if specifically set forth at length.

*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

H. EXECUTION OF AGREEMENT

This agreement shall be executed by the ILA, for and on behalf of itself and its affiliated locals and by New York Shipping Association, Inc. for and on behalf of its employer-members and by each contracting stevedore and vessel carrier who directly or indirectly utilizes the services of any employees covered by this agreement and who by such execution binds itself and its successors to each and every term and condition of the agreement, including, without limitation, the contribution of its proportionate share of the hourly and tonnage contributions provided herein, and no contracting stevedore shall perform services for any carrier, private or governmental, unless such carrier has subscribed to this agreement as aforesaid.

I. USE OF CONTAINER ROYALTY

The Container Royalty established by the November 16, 1960 Stein Award shall be used exclusively for supplemental cash benefits to employees in the industry as of September 30, 1971, who were paid for not less than 700 hours in the contract year immediately prior to payment. The second Container Royalty established by the CONASA—ILA agreement of January 6, 1972 shall be used for fringe benefit purposes only, other than supplemental cash benefits. Unless otherwise agreed to by the Contract Board, such second Container Royalty shall be used for Welfare and Clinic purposes in the first contract year and for Pension purposes in the second and third contract years.

J. SENIORITY

Sections 2, 3, 6 and 18 in Brooklyn are consolidated into one section—Section 1. Local 1814 is now one section.

*Exhibit A, Settlement of Port of Greater New York  
Conditions, Annexed to Foregoing Affidavit.*

Employees who entered the industry on or after October 1, 1968 and who have received 700 hours of credits by employer—members of NYSA during the contract year October 1, 1970—September 30, 1971 and who have current active seniority status shall be made eligible for guaranteed annual income and receive section seniority cards as of April 1, 1972.

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Except as modified by the above, as well as the Master Contract provisions and attachments A and B hereto, all other provisions of the contract in effect on September 30, 1971 shall continue in effect. The above fully settles all outstanding New York issues for all crafts.

**Exhibit B, NYSA-ILA Pension Plan, Annexed to  
Foregoing Affidavit.**

**ARTICLE I—ESTABLISHMENT OF THE PLAN**

Section 1. On this eighth day of December, 1950, the employer-members of the New York Shipping Association, (hereinafter referred to as the NYSA), and the International Longshoremen's Association, (hereinafter referred to as the ILA), do hereby establish this Pension Plan for the benefit of employees working under the several collective bargaining agreements between employer members of the NYSA and the ILA for the Port of Greater New York and vicinity. Hatch Foremen, Hatch Bosses, Foremen and Assistant Foremen, who meet the eligibility requirements herein set forth, shall be entitled to pensions under this Plan. Superintendents who were employed under the collective bargaining agreements prior to their promotion, and who meet the eligibility requirements are covered for a period of five (5) years. Delegates, business agents, officials and employees of the I.L.A., the Atlantic Coast District, the New York District Council, or a Local of the I.L.A., who function in the Port of Greater New York and vicinity and who meet the eligibility requirements (subject to Section 6 of Article III herein), shall also be entitled to pensions.

Section 2. This Plan shall become effective as of January 1, 1950. Pension payments shall commence as of January 1, 1951.

**ARTICLE II—DEFINITIONS:**

Section 1. As used herein:

(a) "Employment in the industry" or "employed in the industry" means (1) employment or being employed by one or more present or former employer-members of the NYSA in the Port of Greater New York and vicinity under a col-



*Exhibit B, NYSA-ILA Pension Plan, Annexed to  
Foregoing Affidavit.*

lective bargaining agreement between such employer-members and the ILA; (2) employment or being employed by any of the following twenty-one employers prior to January 1, 1950, providing the employee, at the time he applies for retirement, is then employed by an employer-member of the NYSA in the Port of Greater New York and vicinity under a collective bargaining agreement between such employer-member and the ILA, or by the Union as set forth in (3) of this definition:

- Old Dominion Line
- Eastern Steamship Line
- Savannah Line
- Clyde Mallory Line
- Southern Pacific Steamship Lines  
(Morgan Lines)
- Garcia Steamship Company
- James J. Ball & Sons, Inc.
- Ira Garbutt Company
- Daniel Kelly Cooperage
- Newark Tidewater Terminal Company
- North American Navigation Corp.
- (i) National Sugar Refining Co.,  
Edgewater, N.J.
- (i) Scandinavian American Line
- (ii) Colonial Line
- (ii) Red "D" Line
- (ii) Colombbian Line

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- (iii) C. H. Sprague & Co.
- (iv) New England Steamship Company
- (v) R. A. Dollaway
- (vi) Refined Syrups, Inc.
- (vii) Pier Machine Works

and (3) employment or being employed by the Union in the capacity of Union Representative (subject to Section 6 of Article III herein) and (4) employment or being employed prior to 1941 by any company then engaged as a waterfront warehouse under collective bargaining agreement between such employer and the ILA, providing the employee, at the time he applies for retirement, is then employed by an employer-member of the NYSA in the Port of Greater New York and vicinity under a collective bargaining agreement between such employer-member and the ILA and (5) employment or being employed in foreign countries on United States government sponsored projects pursuant to government request, provided the employee has previously been employed by an employer-member of NYSA in the Port of Greater New York and vicinity under a collective bargaining agreement between such employer-member and the ILA, and provided further that contributions are made on behalf of such employee for such employment abroad, and (6) employment or being employed as a direct full time salaried employee of this Fund, any other NYSA-ILA benefit fund or of any Medical Center operated by an NYSA-ILA benefit fund, where such employment follows not less than five (5) years of employment with a minimum of 400 hours in any such year and an average of 700 hours per year with any employer described in subparagraphs (1) through (5) hereof, provided the employee is not covered by the provisions of

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any other pension plan or retirement program to which any NYSA-ILA benefit fund is making contributions and provided further that contributions are made on behalf of such employee with the exception of employees of this Fund, and (7) employment or being employed as a Dispatcher in accordance with the terms of the collective bargaining agreement between NYSA and ILA, where such employment follows not less than five (5) years of employment with a minimum of 400 hours in any such year and an average of 700 hours per year with any employer described in subparagraphs (1) through (6) hereof; provided that contributions are made on behalf of such employee.

(b) "Employee" means any person employed in the industry and any person employed by an Employer, as that term is hereinafter defined except any person who:

(i) entered the longshore industry on or after October 1, 1968 and who was not previously thereto covered by the terms and provisions of this Plan and the NYSA-ILA Agreement and Declaration of Trust; and

(ii) was covered by the terms and provisions of this Plan pursuant to an agreement, dated July 11, 1957, between this Plan and Waterfront Employers Locals Nos. 976-4, 783 and 1478-2 who became employees of any of the employer parties thereto on or after October 1, 1968.

(c) The term "Employers" shall include: (1) The Employer-Members who in accordance with the By-Laws and the practices of the NEW YORK SHIPPING ASSOCIATION, INC., agree to be bound by or have ratified and approved the terms and provisions of this Agreement, or have authorized the President of the NEW YORK SHIPPING ASSOCIATION, INC. to subscribe to the same for and on their behalf, (2) the

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Union and its affiliated Locals, and (3) any other Employer that has a collective bargaining agreement with the Union and its affiliated Locals and who with the consent of all parties becomes a signatory of this Agreement or otherwise agrees to be bound by its provisions.

(d) "Plan" means the Pension Plan described herein.

(e) "Fund" means the trust fund or insured fund, or both, provided for in Article VI.

(f) "Central Records Bureau" means the New York Shipping Association, Inc., Central Records Bureau.

(g) "Trustee" means the Trustee described in Article VI.

(h) "Board" means the Pension Board provided for in Article VII.

(i) "Member of the Board" means a member of the Pension Board.

(j) "NYSA Member" means a member of the Board appointed by the NYSA as provided for in Article VII.

(k) "ILA Member" means a member of the Board appointed by the ILA as provided for in Article VII.

(l) "Union" means the ILA, the Atlantic Coast District, the New York District Council, or a local of the ILA.

(m) "Union Representative" means a delegate, business agent, official, representative, or employee of the Union, elected or appointed, and receiving a salary from the Union, whose duties are performed in whole or substantial part in the Port of Greater New York and vicinity and in connection with the crafts covered by this Pension Plan.

(n) "Pensioner" means any person receiving a pension under this Plan.



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(o) "Contract Year" means October 1 of each year to September 30th of the following year.

(p) The term "year" shall mean Calendar year:

(i) Up to December 31, 1972.

(ii) Contract year beginning with October 1, 1972.

Year for the period October 1, 1972 to December 31, 1973, shall mean either the calendar year 1973 or the contract year 1972-1973 whichever is more favorable to the employee.

ARTICLE III—ELIGIBILITY FOR PENSIONS

Section 1. An employee, to be eligible for a pension, must fulfill the following conditions:

(a) He must make formal application for a retirement pension to the Board.

(b) He must, at the time of his application, be employed in the industry.

(c) He must have reached the age of sixty-two (62) years and must furnish proof satisfactory to the Board that:

(i) He has been employed in the industry for a continuous period of not less than twenty-five (25) years, during which period he shall have worked an aggregate total of not less than 17,500 hours, or

(ii) Effective January 1, 1972, he has been employed in the industry for a total period of twenty-five (25) years as follows:

(a) twenty (20) years with an employment record of not less than 400 hours in each of those 20 years, during which period he

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shall have worked an aggregate total of not less than 14,000 hours; and

- (b) at the time of his application, five (5) continuous years with not less than 700 hours in each of those five (5) years during which period he shall have worked an aggregate total of not less than 3,500 hours.

Section 2. Employment in the industry shall be deemed to have terminated and shall no longer be considered continuous when the employee has worked in the industry less than 400 hours a year for more than two (2) calendar years except when his failure to work 400 hours a year or his absence from the industry is due to:

- (a) Sickness or injury incurred off the job for a continuous period of not more than two (2) years. If such sickness or injury is in excess of a continuous period of two (2) years, the Board may, in its discretion, extend the period for not more than one (1) additional year.
- (b) Injury incurred on the job for which the employee received compensation for temporary total disability, or temporary partial disability, or permanent partial disability, as the case may be, in which event pro rata credit as hours worked for the period of such compensation shall be given him on the following basis:
  - (i) Temporary total disability—pro rata credit at rate of 700 hours a year.
  - (ii) Temporary partial disability—pro rata credit at the rate of 700 hours a year, but subject to Clause (iv) below.

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- (iii) Permanent partial disability—pro rata credit at the rate of 700 hours a year for a total period not in excess of ten years from the date of commencement of compensation payments with respect to any one injury, but subject to Clause (iv) below.
- (iv) The hours credited during a year under Clause (ii) or (iii) above, as the case may be, when added to hours actually worked in the industry by such an injured employee during such year, shall not cause his work record during such year to exceed 700 hours.

In any instance of injury incurred on the job in which the employee pursued his remedy through an action against a third party, he shall receive pro rata credit as hours worked at the rate of 700 hours per year for a total period not in excess of ten years from the date of the injury with respect to any one injury, on the basis of the amount of any final judgment in his favor entered in such action or of any agreed settlement thereof divided by the then applicable statutory maximum weekly compensation rate, but subject to Clause (iv) above; in the event such action is withdrawn or otherwise terminated or judgment in favor of the third party is entered thereon and the injured employee is subsequently awarded compensation, the provisions of Clause (i), (ii), or (iii) above, as the case may be, shall apply.

- (c) Military service for a continuous period of not more than three (3) years. If such military service is in excess of a continuous period of three (3) years, the Board, may in its discretion, extend the period for not more than two (2) additional years. Any employee who subsequent to May 1, 1940 served in the

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Armed Forces of the United States and who complies with requirements of law, if any, as to re-employment, and is re-employed in the industry shall, when such service is duly supported by the applicant's service record, receive credit at the rate of 1,000 hours a year for the time of service up to three (3) years, unless said three (3) year period of credit is extended for not more than two (2) additional years by the Board which shall have full discretion to grant such additional credit.

- (d) Inability to obtain employment in the industry in the years 1942 or 1943 due to then existing war conditions, and/or in 1944, 1945 or 1946 due to War Manpower Regulations then in effect—provided that the applicant's employment in the industry as defined in this Section 2 has not been terminated either prior to or subsequent to such of the years hereinabove specified as are applicable to said applicant.
- (e) Interment or civil detention in a foreign country, by order of the Government of that country, due to an international political crisis.
- (f) Employed as a Superintendent by an employer member of the NYSA in the Port of Greater New York and vicinity for a period not to exceed five (5) years provided the employee was employed in the industry prior to the commencement of such period.
- (g) Employment by Trailorships, Inc. during the years 1952, 1953, 1954, and/or 1955, provided the employee was employed in the industry prior to the commencement of the period of such employment.
- (h) Employed by an employer member of the NYSA prior to the year 1955 for a period not to exceed two



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years on a pier or terminal in the Port of Greater New York in a job not covered by a collective bargaining agreement with the ILA, provided the employee was employed in the industry prior to the commencement of such period. Any hours of employment accumulated prior to a termination of employment shall not be considered for purposes of pension eligibility.

- (i) Suspension or revocation of registration or license by the Waterfront Commission of New York Harbor, provided the employee returns to employment in the industry.
- (j) In any instance where an applicant would have been eligible for a pension under this Plan had he filed an application in a particular year subsequent to January 1, 1951, then his failure to work 400 hours in the industry in that year or in any subsequent year shall not be considered to terminate his continuous employment in the industry within the meaning of this section. At the option of the applicant, such years shall not be included in determining whether he meets the eligibility condition set forth in the applicable paragraph of Section 1-(d) sic [(c)] of this Article.
- (k) In any instance in which an employee is 60 years of age or over but not yet 62 years of age and would be eligible for a pension were he then 62 years of age, his failure to be employed in the industry, or to work for any particular number of hours, in that year or in any subsequent years shall not affect his eligibility when he reaches the age of 62.
- (l) In any instance in which an employee whose employment in the industry does not terminate before Octo-

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ber 1, 1963 would be eligible for a pension were he then 62 years of age, his failure to be employed in the industry, or to work for any particular number of hours in any subsequent year shall not affect his eligibility when he reaches the age of 62. The pension benefit of any employee eligible under this paragraph shall not be greater than the monthly benefit in effect at the time his pension eligibility would have ended were it not for the provisions of this paragraph.

Section 3.

(a) The number of hours worked during the period from January 1, 1937 through December 31, 1945 shall be determined from the records of the Federal Social Security Administration on the basis of the fixed sum of one dollar and twenty-five cents (\$1.25) as the average hourly wage, inclusive of overtime. In any instance in which such determination indicates that employment in the industry for any calendar year during the period from January 1, 1937 through December 31, 1945 has been less than 400 hours, the applicant shall have the right to present proof to the Board, which shall be the sole judge of the sufficiency of such proof, that he did in fact work 400 or more hours during that year.

The number of hours worked during the period from January 1, 1946 through December 31, 1950 shall be determined by the records of the New York Shipping Association, Inc., Central Records Bureau, unless in any instance the records of the Central Records Bureau do not include such data for any part of such period and, in that event, the number of hours worked shall be determined from the records of the Federal Social Security Administration.

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In the event that any employer, because not required to do so by law, has not filed or does not file a report on the earnings of his employees with the Federal Social Security Administration for any period of time from January 1, 1937 through December 31, 1945, or has not filed or does not file reports for either the Central Records Bureau or the Federal Social Security Administration for any period of time commencing on or subsequent to January 1, 1946, then any employee of such employer shall have the right to present proof of his hours of employment during any such period to the Board in support of his application for a pension.

In any case where there are records available for earnings but not for actual hours of employment, for any period of time subsequent to December 31, 1945, the number of hours worked shall be determined on the basis of the basic straight-time hourly rate then in effect as the average hourly wage, inclusive of overtime.

(b) For the period from January 1, 1951 to the date of retirement, the records of the Central Records Bureau, and, in any instance where the records of the Central Records Bureau do not include the number of hours worked by an employee, the records of the Federal Social Security Administration shall be presumptive evidence of the facts contained therein. Any employee may rebut that presumption by presenting proof to the Board which is to be the sole judge of whether the presumption has been successfully rebutted.

Section 4. At any time after the date of retirement, a former employee receiving a pension under this Plan may return to employment in the industry, but, in that event, he shall immediately so notify the Board and pension payments to him shall thereupon cease for so long as he shall

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continue to be employed in the industry or for one (1) year, whichever period is greater. Thereafter, upon such application as the Board may prescribe, his right to pension payments shall recommence. Failure to notify the Board of his re-employment in the industry within thirty (30) days after his return to employment shall be considered a waiver of any rights he may have to future pension benefits, and such waiver shall be final and binding on the employee; the Board shall have no discretion whatsoever in the application of this provision. The provisions of this section shall apply each time the employee returns to employment in the industry after the date of commencement of retirement.

Section 5. The employer-members of the New York Shipping Association having elected to include Foremen and Assistant Foremen in this Plan. A Foreman or Assistant Foreman is eligible for pension benefits provided he fulfills the requirements set forth in Section 1 of this Article III and any other applicable provision of the Plan. Each employer-member of the New York Shipping Association shall make contributions into the Fund, as of January 1, 1950, for such Foremen and Assistant Foremen as each employs for the hours reported for such Foremen and Assistant Foremen. Such contributions shall be made in the same manner and amount as contributions are made for other employees covered by this Plan. In the case of Foremen and Assistant Foremen employed on a weekly basis, the hours-contribution to be made shall be a minimum of forty (40) hours per week, plus all hours for which overtime wages have been paid during that week.

Section 6. A Union Representative is eligible for pension benefits provided he fulfills the requirements set forth



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in Section 1 of this Article III and any other applicable provision of the Plan. The Union shall make contributions into the Fund in the same manner and amount as contributions are made for other employees covered by this Plan. Such contributions shall be made for all hours reported for such Union Representative commencing with January 1, 1950. The hours to be reported for each such Union Representative shall be on the basis of 500 hours per year for such period of time as he is employed as a Union Representative.

The ILA, the Atlantic Coast District, the New York District Council or any Local of the ILA shall have the right to withdraw from this Plan and to cease being a participating employer herein. Such withdrawal by the ILA or by any of its aforementioned subdivisions may be effectuated: (1) by its written notice of withdrawal to the Board, or (2) by its failure to make the required contributions into the Fund for all of its Union Representatives within six months after the end of the calendar year for which such contributions are due, which failure shall be deemed to terminate its status as a participating employer herein. Any such withdrawal shall be effective as of the day following the last day for which contributions have been made for all Union Representatives of the subdivision involved, and no Union Representative shall be deemed to be employed in the industry, as such, for any period of time after such withdrawal of the subdivision employing him.

Employees employed by this Fund, by any Medical Center operated jointly by the NYSA and ILA and/or any other NYSA-ILA benefit fund and employees employed as Dispatchers pursuant to the Collective Bargaining Agreement between the NYSA and ILA shall be eligible for pension benefits provided they fulfill the requirements set forth in Section 1 of this Article III and Section 1 (a) (6)

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or (7) of Article II, whichever is applicable, and any other applicable provisions of the Plan; and provided that the employing Fund or Medical Center and NYSA on behalf of Dispatchers shall make contributions in the same manner and amount as contributions are made for other employees covered by this Plan. Such contributions shall be made for all hours reported for such Fund or Medical Center employees and NYSA Dispatchers. The hours to be reported for each such employee shall be on the basis of 1600 hours per year or such period of time as he is employed by such Fund or Medical Center, or as an NYSA Dispatcher. No contributions shall be required for employees of this Fund.

Section 7. Any employee who is forty (40) years or older on or after January 1, 1950, who has been employed in the industry for a continuous period of not less than fifteen (15) years, and who during such continuous period has been employed in the industry a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being employed in the industry at the time he sustains such disability, shall be entitled to a pension.

No pension on grounds of disability shall be granted to an employee whose disability was suffered as the result of criminal activity, self-inflicted injury, or addiction to narcotics, or sustained in military service.

In the event an applicant for pension benefits whose application is approved on or after July 25, 1958 on grounds of disability and who at any time after such approval receives disability benefits under the requirements of law, or in the event a pensioner whose application was approved on such ground receives at any time after July 25,

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1958, such disability benefits, payment of pension benefits under the Plan shall be suspended for the entire period that such disability benefits are being paid; pension benefits are to commence or be resumed, as the case may be, at the beginning of the month following the termination of the disability benefits payment.

Notwithstanding anything herein contained, for an employee to have been employed in the industry for a continuous period of not less than fifteen (15) years within the meaning of this Section, he must have worked in the industry not less than 400 hours a year for at least thirteen (13) years without recourse to any of the credit provisions contained in the various subdivisions of Section 2 of this Article.

Section 8. In any case where disability or sickness or injury, whether incurred on or off the job, may affect an employee's right to a pension, such disability, sickness, or injury, must be substantiated to the satisfaction of the Board. In the event of disagreement by the Board a competent physician or physicians, appointed by the Board, shall make final determination with respect to such disability, sickness or injury. The employee, upon request of the Board, must submit to an examination by any physician or physicians selected by the Board, which shall pay for the cost thereof and any expenses incident thereto. A former employee receiving a pension due to disability under this Plan, must, upon request of the Board, submit to an examination to determine whether he is eligible for continuance of such pension. If any employee or former employee shall refuse to submit to any examination requested hereunder, he shall not receive or continue to receive a pension due to disability, or shall not be deemed to have suffered sickness or injury, whichever the case may be.

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Section 9. An applicant for pension benefits who, due to an occupational disability, is receiving compensation benefits under State or Federal Compensation Laws, as they now exist or are hereafter modified, has received a lump sum award for his compensable disability, or has had a final judgment entered in his favor in any action against a third party, shall:

- (a) If sixty-two (62) years of age or older and found to be eligible for a pension—receive from the Fund the maximum monthly pension benefits to which he is entitled under the Plan;
- (b) If under sixty-two (62) years of age but found to be eligible for pension on grounds of permanent and total disability—receive from the Fund the maximum monthly pension benefits to which he would otherwise be entitled under the Plan, less the amount of any monthly compensation benefits he may be receiving for temporary total disability or temporary partial disability under those laws or less such equitable sum as may be determined by the Board in the event he has received a lump sum award or has had a final third party judgment. Upon reaching sixty-two (62) years of age, paragraph (a) above shall immediately become applicable.

Section 10. In the event an employee eligible to receive a pension under this Plan is also eligible to receive pension benefits under any other Pension Plan covering waterfront employees in the Port of Greater New York and vicinity established under collective bargaining agreements between the employer-members and any other Union, he shall choose either the benefits under this Plan or the benefits under such other Pension Plan. The intention of this Section is to eliminate such duplication of coverage.



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ARTICLE IV—PENSION BENEFITS

Section 1. The basic monthly pension benefit for each employee who is entitled to receive such benefit shall be:

(a) \$175 per month, effective April 1, 1972, for all persons on pension as of January 1, 1966.

(b) \$225 per month, effective April 1, 1972, for all persons who filed applications for pensions under Article III, Section 1, of this Plan to be effective between January 1, 1966 and April 1, 1969, and whose applications were approved by the Board under Article III, Section 1 of this Plan.

(c) \$325 per month, effective April 1, 1972, for all persons who filed applications for pensions under Article III, Section 1 of this Plan to be effective on or after April 1, 1969, and whose applications were approved by the Board under Article III, Section 1 of this Plan and were effective prior to April 1, 1972.

(d) \$400 per month, effective April 1, 1972, for all persons who filed applications for pensions under Article III, Section 1 of this Plan to be effective on or after April 1, 1972, and whose applications were approved by the Board under Article III, Section 1 of this Plan.

(e) Effective April 1, 1972, for all persons who filed applications for pensions on grounds of disability under Article III, Section 7 of this Plan to be effective between January 1, 1966 and April 1, 1969, and whose applications were approved by the Board under Article III, Section 7 of this Plan:

\$175 per month if the applicant has been employed in the industry for a continuous period of fifteen (15) consecutive years with an increase in monthly benefit of \$5.00 per month for each additional

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continuous year of such employment to a maximum of \$225 per month for twenty-five (25) or more years of continuous employment.

(f) Effective April 1, 1972, for all persons who filed applications for pension on grounds of disability under Article III, Section 7 of this Plan to be effective on or after April 1, 1969, and whose applications are approved by the Board under Article III, Section 7 of this Plan:

\$205 per month if the applicant has been employed in the industry for a continuous period of fifteen (15) consecutive years with an increase in monthly benefit of \$12.00 per month for each additional continuous year of such employment to a maximum of \$325 per month for twenty-five (25) or more years of continuous employment.

(g) Effective April 1, 1972, for all persons who filed applications for pensions on grounds of disability under Article III, Section 7 of this Plan to be effective on or after April 1, 1972, and whose applications are approved by the Board under Article III, Section 7 of this Plan:

\$240 per month if the applicant has been employed in the industry for a continuous period of fifteen (15) consecutive years with an increase in monthly benefit of \$16.00 per month for each additional continuous year of such employment to a maximum of \$400 per month for twenty-five (25) or more years of continuous employment.

(h) For persons who file applications for pension pursuant to Article III, Section 2 (k) of this Plan, and whose applications are approved by the Board, their

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monthly pension benefit shall be that benefit which was in effect at the time their pension eligibility would have ended were it not for the provisions of that paragraph.

Section 2. In the case of those who retired between April 1, 1965 and January 1, 1966, the monthly pension shall not be reduced below \$125.00 at any time during the life of the pensioner.

In the case of those who retired between January 1, 1966 and April 1, 1969, the monthly pension shall not be reduced below \$175.00 at any time during the life of the pensioner. In the case of all other pensioners, the Board may establish a different pension as provided in this Plan.

Section 3.

(a) Effective April 1, 1969, a monthly benefit of \$100 shall be paid to the widow, as herein defined, of any person who dies after January 1, 1965, who is employed in the industry as defined in this Plan, for a continuous period of not less than twenty-five (25) years immediately prior thereto, such monthly benefits to commence when the employee would have reached the age of sixty-two (62) years, but not prior to his death and not prior to January 1, 1966.

(b) A monthly benefit shall be paid to the widow, as herein defined, of any pensioner whose application for a pension is approved on or after January 1, 1965 and who dies after that date, such benefit to be (1) in the case of pensioners dying prior to April 1, 1969, fifty (50%) percent of the monthly benefit payable to the pensioner at his death plus, effective April 1, 1969, the additional sum of \$12.50, and (2) in the case of pensioners dying on or after April 1, 1969, fifty (50%) percent of the monthly benefit payable to the pensioner at his death up to a maxi-

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mun of \$100.00 per month. Such monthly benefit to widows shall commence on the first day of the month following the month of the pensioner's death but not prior to January 1, 1966.

(c) A monthly benefit of \$100 shall be paid to the widow, as herein defined, of any person who dies after January 1, 1965, who is employed in the industry at the time of his death and who was employed in the industry as defined in this Plan, for a continuous period of not less than twenty-three (23) years immediately prior thereto, during which period he shall have worked an aggregate of not less than 17,500 hours, such monthly benefits to commence when the employee would have reached the age of sixty-two (62) years or twenty-five (25) years after the beginning of his continuous employment in the industry, whichever is later, but not prior to his death and not prior to January 1, 1968.

(d) A monthly benefit shall be paid to the widow, as herein defined, of any employee, irrespective of age, who is employed in the industry at the time of his death and who was employed in the industry, as defined in this Plan, for a continuous period of not less than fifteen (15) years immediately prior thereto and who dies after January 1, 1965 as a result of injury or accident incurred on the job, such benefit to be fifty (50%) percent of the monthly benefit which the employee would have received had he been awarded a pension on grounds of total and permanent disability by reason of the accident or injury which caused his death, such widow's benefit to be no more than \$100 per month.

(e) For purposes of Section 3 (a), (c) and (d), the term "widow" shall mean a woman who, at the time of the death of an employee has been married to him for at least



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one (1) year, except that the one year period shall not apply in the case of an employee who suffers accidental death. On remarriage of said woman, she shall no longer be eligible for the benefits provided herein.

(f) For the purposes of Section 3 (b), the term "Pensioner Widow" shall mean a woman who at the time of death of a pensioner has been married to him for not less than two (2) years, except that the two year period shall not apply in the case of a pensioner who suffers accidental death. On remarriage of said woman, she shall no longer be eligible for the benefits provided herein.

Section 4.

(a) A special early retirement pension shall be payable as of June 1, 1969 and June 1, 1970, only, to eligible employees who apply therefor prior to said dates. In order to be eligible to receive such pension as of June 1, 1969, the employee must have reached the age of fifty-five (55) years prior to June 1, 1969 and must have been employed in the industry for a continuous period of not less than twenty (20) years. In order to be eligible to receive such pension as of June 1, 1970 the employee must have reached the age of fifty-five (55) years prior to June 1, 1970 and must have been employed in the industry for a continuous period of not less than twenty (20) years.

(b) A special early retirement pension shall be payable as of June 1, 1972 to eligible employees who apply therefor prior to July 1, 1972 and as of October 1, 1972, to eligible employees who apply therefor from July 1, 1972 to and including September 30, 1972. In order to be eligible to receive such pension an employee must have:

(i) reached the age of fifty-five (55) years prior to January 1, 1973, and must have been employed in the

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industry for a continuous period of not less than twenty-five (25) years;

or

(ii) reached the age of fifty (50) years prior to January 1, 1973, and must have been employed in the industry for a continuous period of not less than twenty (20) years.

(c) For purposes of the early retirement pension under this Section 4 only, employment in the industry shall include only such employment as is referred to in Article II, Section 1 and Article XI, Section 4 hereof, and shall not include employment for any employer who is a participating employer in the Plan pursuant to the provisions of Article XI, Section 1, 2 and 3 hereof, unless such employer has agreed to and does make the same contributions as is made by employer-members of New York Shipping Association, Inc.

(d) Employees whose applications for early retirement pension are approved by the Board under Section 4 (a) shall receive a monthly benefit of \$250.00 per month until they reach the age of sixty-two (62) years, at which time their monthly benefit shall be increased to \$300.00 per month.

(e) Employees whose applications for early retirement pension are approved by the Board under Section 4(b) (i) shall receive a pension of \$350.00 per month for life. Employees whose applications for early retirement pension are approved by the Board under Section 4 (b) (ii) shall receive a pension of \$300.00 per month for life.

(f) A monthly benefit of \$100.00 shall be paid to the widow as defined in Section 3 (f) of this Article, of any

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early retirement pensioner whose application for a pension is approved by the Board pursuant to this Section 4, such benefit to commence on the first day of the month following the month of the pensioner's death, but not prior to the date on which such pensioner would have reached sixty-two (62) years of age.

*Section 5.*

(a) Effective October 1, 1963, upon proof of death from any cause of a person who, at the time of death, was receiving pension payments under this Plan, the sum of \$1,000.00 shall be paid from the Fund to any beneficiary designated by such person. The designation of beneficiary shall be the sole and exclusive right of each pensioner. In the event no beneficiary has been designated, payment shall be made as follows:

- (i) To the surviving wife, if any;
- (ii) if no surviving wife, to the deceased's surviving children, if any, equally;
- (iii) if no surviving wife, and no surviving children, to the deceased's surviving parent or parents, if any, equally;
- (iv) if no surviving wife and no surviving children and no surviving parent, to the deceased's surviving brothers and sisters, if any, equally.

In the event there is no designated beneficiary, surviving wife, surviving children, surviving parent, or surviving brothers and/or sisters, then no payment shall be made.

(b) Pensions shall be paid monthly. The first monthly payment of any employee's pension shall be on the first day of the month following the month in which the employee

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application for a pension is approved by the Board. Pension payments shall end with the month in which the pensioner dies. Monthly pension payments may be reduced or suspended by the Board as provided in this Article IV.

Section 6. The pension of any pensioner, other than a pensioner receiving a pension due to total and permanent disability, shall cease as of the date of hire if the pensioner is reemployed in the industry, and shall resume the first of the month following his re-establishment of eligibility in accordance with the provisions of this Plan. In the case of a pensioner receiving a pension due to disability, if he is found to be no longer disabled, or if he engages in gainful employment, other than for purposes of rehabilitation on a nominal wage basis, his pension due to disability shall cease.

Section 7. If, the Board shall find that any pensioner is unable to care for his affairs because of illness or accident, any payment due him may be paid to the spouse, a child, a parent, a brother, a sister, or any other person found by the Board to have incurred expense in the care of such pensioner. Any such payment shall be a complete discharge of any liability of the Fund therefor. In the event a pensioner is committed or confined to any state or public hospital or mental institution for reasons of illness, physical or mental, benefits shall cease during the period of such commitment or confinement; in such an instance, however, if the Board shall find that dependent spouse, child, parent, brother, or sister is in need because of such pensioner's commitment or confinement, it may in its discretion authorize the payment of the pension benefits to the relative concerned.



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Section 8. Except as otherwise provided heretofore, whenever it is actuarially determined that the financial situation of the Fund required or permits it, the Board in its sole discretion, may either increase, decrease, suspend and/or restore pension benefits; provided however, that increases shall be granted not more frequently than once a year.

In the event that a change is made in the amount of monthly benefits, either upward or downward, pursuant to the provisions of this Article, such change shall be made through an amendment to this Plan, which amendment shall be submitted to the Commissioner of Internal Revenue for consideration as to approval under Section 401 (a) and 501 (a) of the 1954 Internal Revenue Code or any successor statute.

Section 9. Payments made by an employer to the Fund and pension payments made by the Fund shall not constitute or be deemed to be wages. No employee shall have any right, title, interest, or claim, legal or equitable, in or to his employer's or any other employer's payment to the Fund.

Section 10. No employee shall have any vested right under the Plan except as may be expressly provided in this Plan. The Board retains full power except as expressly provided in the Plan, to amend the provisions thereof. The Board shall have no obligation to pay pension benefits to any pensioner during the time that it has suspended payment in accordance with the provisions of this Article IV.

Section 11. If an insurance contract is entered into by the Board with any insurance company whereby an insured fund is established to receive employer contributions and other income and to pay pensions, then in the event that either this Plan or said insurance contract is terminated,

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the assets remaining in the Fund shall be used as follows: Annuities shall be purchased for all persons who are pensioners as of the date of termination which will entitle such pensioners to monthly pension benefits for the remainder of their respective lives in the amount determined by the Board under the provisions of this Article IV, either at the time the insurance contract is executed or at any time thereafter.

Any sums then remaining in the Fund and/or subsequently received by the Fund shall be used by the Board to pay pension benefits to employees becoming eligible therefor after the date of termination. Such sums may be received, held and distributed to pensioners either through a trust fund established by agreement with a Trustee or through an insured fund established by another insurance contract with an insurance company, or both, as may be determined by the Board.

ARTICLE V—NON-ALIENATION OF BENEFITS

No benefit payable at any time under the Plan shall be subject in any manner to alienation, sale, transfer, assignment, pledge, attachment or encumbrance of any kind. Any attempt to alienate, sell, transfer, assign, pledge or otherwise encumber any such benefit, whether presently or thereafter payable, shall be void. No benefit nor the Fund shall in any manner be liable for or subject to the debts or liability of any employee or retired employee entitled to any benefits. If the employee or retired employee shall attempt to, or shall alienate, sell, transfer, assign, pledge, or otherwise encumber his benefits under the Plan or any part thereof, or if by reason of his bankruptcy or other event happening at any time such benefits would devolve upon anyone else or would not be enjoyed by him, then the Board in its sole discretion may

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terminate his interest in any such benefit and hold "or" apply it to or for the benefit of such person, his spouse, children, or other dependents, or any of them in such manner as the Board in its discretion, may deem proper.

ARTICLE VI—FINANCING

Section 1. A Trustee or an insurance company, or both, shall be designated by the Board, and a trust agreement or insurance contract, or both executed between the Board and such Trustee or insurance company, or both, under the terms of which a trust fund or insured fund, or both, shall be established to receive and hold contributions payable by any employer, interest and other income, and to pay the pensions provided by the Plan. Such trust fund or insured fund, or both if they co-exist, shall be known as and is herein referred to as the Fund. The Board may and is hereby authorized to serve as Trustee of the Fund or any part of it.

The Board shall determine the form and terms of any such trust agreement, insurance contract or declaration of trust and may modify any such agreements, contract or declaration from time to time to accomplish the purposes of the Plan. The Board may select, remove and change any Trustee or successor Trustee, and may select, remove and change insurance companies.

Section 2. Each employer-member of NYSA shall pay into the NYSA-ILA Pension Trust Plan Fund, for the benefit of this Fund, at regular intervals, the amount per hour provided for under the Collective Bargaining Agreement, for each hour for which each of its employees, hatch foremen, hatch bosses, foremen and assistant foremen are entitled to be paid. The Union shall pay at the same rate provided however, that the Union shall pay on the basis

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of 500 hours per year for each of its Union Representatives.

Section 3. No employee shall be required to make any contributions to the Fund.

Section 4. No employer shall have any right, title or interest in the contributions made by it to the Fund, and no part of the Fund shall revert to any employer.

Section 5. It shall be impossible for any part of the corpus or income of the Fund, except for such sums as may be expended in the administration of the Plan as provided herein, to be used for, or diverted to, purposes other than for the exclusive benefit of the employees. At all times, the assets in the Fund to the extent that they shall be sufficient, shall be allocated for the purpose of paying pension benefits to the persons then receiving them and to employees who subsequently may become eligible therefor under the provisions of this Plan, as well as the payment of any death benefit provided for hereunder. Payment of pension benefits shall continue in accordance with the provisions of the Plan until the entire Fund is disbursed.

Section 6. All NYSA-ILA benefit funds, excluding this Fund, shall contribute the amount per hour required to be contributed by the employer-members on behalf of all of their employees covered by this Fund on the basis of 1600 hours per year.

Section 7. NYSA shall contribute the amount per hour required to be contributed by the employer-members of NYSA, on behalf of its Dispatchers covered by this Fund on the basis of 1600 hours per year.



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ARTICLE VII—ADMINISTRATION OF THE PLAN

Section 1. The Plan shall be administered by a Pension Board composed of ten members appointed by NYSA, and ten members appointed by the ILA, each of whom shall be a member of the NYSA-ILA Contract Board and who shall serve only so long as he is a member of that Board. These members shall serve without compensation from the Fund, but shall be reimbursed for all reasonable and necessary expenses which they incur in the performance of their duties as members of the Board.

The President of the ILA and the President of the NYSA shall act as Co-Chairman of the Pension Board and shall alternate monthly in serving as Chairman of the full Pension Board.

In the event of a disagreement or deadlock on any question before the Board including a question of an amendment of the Plan pursuant to Article IX, Section 1, the dispute shall be settled by arbitration in accordance with the arbitration provision in effect in the collective bargaining agreement between NYSA and the ILA. The decision of the arbitrator shall be final and binding on all concerned.

Section 2. Either the NYSA for the employer-members or the ILA at any time may remove a member appointed by it and may appoint a member to fill any vacancy, whether due to death, resignation, removal, or any other cause, among the members appointed by it; provided however the member so appointed is a member of the NYSA-ILA Contract Board. Both the NYSA and the ILA shall notify each other and each member of the Board in writing of the members respectively appointed by them, and upon such notice any such appointment shall be effective.

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Section 3. The Board shall have such powers as are necessary and proper for the administration of the Plan, including but not limited to the following:

(a) To make and enforce by-laws for its own government and such rules and regulations as it shall deem necessary and proper for the efficient operation of the Plan, and to decide such questions as may arise in connection with the operation of the Plan;

(b) To demand, collect and receive all employer contributions and to hold the same until applied to the ultimate purposes herein provided for, and to take such steps, including the institution and prosecution of or the intervention in any proceeding at law or in equity or in bankruptcy as may be necessary or desirable to effectuate the collection of such employer contributions;

(c) To prescribe procedures to be followed by employees in filing applications for benefits, and for the furnishing and verification of evidence necessary to establish employees' rights to benefits under the Plan;

(d) To make determinations as to the rights of any employee applying for pension benefits;

(e) To develop procedures for the establishment, compilation, tabulation, and analysis of employment records and for the determination, in accordance with the provisions of the Plan, of the number of hours worked by all persons employed in the industry;

(f) To obtain from any employer, the NYSA, the Union, any employee or former employee, any government agency, or any other person or body, such information as shall be necessary for proper administration of the Plan;

(g) To authorize and to make payments from the Fund to persons entitled to pension benefits under the Plan;

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(h) To prepare and distribute in such manner as the Board determines to be appropriate information explaining the Plan;

(i) To furnish to the NYSA and to the ILA upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate;

(j) To obtain and analyze reports on receipts and disbursements of the Fund; to keep books of account and records of all transactions of the Board and the members of the Board acting as such; and to provide for such actuarial evaluations of the Plan as the Board shall deem desirable;

(k) To pay from the Fund all reasonable expenses of collecting the employer contributions and administering the Plan, including, but not limited to, all expenses which may be incurred in connection with the establishment of the Plan, the purchase or lease of such office space, materials, supplies and equipment, and the employment of such administrative, legal, expert and clerical assistance as the Board, in its discretion, finds necessary or appropriate in the performance of its duties;

(l) To designate the depositories in which the Fund or any part thereof shall be deposited.

Section 4. The Board shall have the books of account and records of the Plan audited by a certified public accountant from time to time as the Board shall determine, but at least annually. A statement of the results of such audit shall be available for inspection by interested parties at such office or offices as the Board shall establish.

Section 5. The Board shall have power to set up such reserves as it may deem wise for the effectuation of the purposes of the Plan.

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Section 6. The Board of Trustees shall have the power to invest and reinvest the Fund or any part thereof, without distinction between principal and income, in shares of stock (whether common or preferred) or other evidences of ownership, bonds, debentures, notes or other evidences of indebtedness, unsecured or secured by mortgages on real or personal property wherever situated (including any part interest in a bond and mortgage or note and mortgage whether insured or un-insured) and other property, or part interest in property, real or personal, foreign or domestic whether or not productive of income or consisting of wasting assets, without any duty to diversify and without regard to any restriction placed upon fiduciaries by any present or future applicable law, administrative regulation, rule of court or court decision. The Board of Trustees may transfer such power, to the extent deemed wise, to a Corporate Trustee and may enter into agreements in connection therewith with such Corporate Trustee containing such provisions as the Board of Trustees deems desirable including, without limiting the generality of the foregoing, power to invest or reinvest the Fund or any part thereof in interests in any trust fund that has been or shall be created and maintained by the Corporate Trustee as trustee for the collective investment of funds of trusts for employee benefit plans qualified under Section 401 (a) of the Internal Revenue Code of 1954 (or corresponding provision of any subsequent Federal revenue law at the time in effect), the Declaration of Trust or the instrument creating such trust fund, together with any amendments, modifications or supplements thereof, being hereby, effective when and as such investments are made, incorporated in and made a part of this Agreement as fully and to all intents and purposes as if set forth herein at length.



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Section 7. To constitute a quorum for the transaction of business, there shall be required to be present at any meeting of the Board at least six (6) ILA members of the Board and six (6) NYSA members of the Board. At all meetings of the Board the NYSA members shall have a total of ten (10) votes and the ILA members shall have a total of ten (10) votes; the votes of any absent member being divided equally between the members present appointed by the same party. Decisions of the Board shall be by a majority of the votes cast.

Section 8. The Board and any of its members shall be entitled to rely upon the correctness of any information furnished by the NYSA, the Union, any employer-member of the NYSA, the Central Records Bureau and the Federal Social Security Administration. Neither the Board nor any of its members, nor the Union, nor any officer or any other representative of the Union, nor the NYSA, nor any officer or other representative of the NYSA, nor an employer-member of the NYSA, nor any officer or other representative of such employer-member, shall be liable because of any act or failure to act on the part of the Board, or any of its members, to any person whatsoever, except that nothing herein shall be deemed to relieve any such individual from liability for his own fraud or bad faith.

Neither any employer, the NYSA nor the Union shall be liable in any respect for any of the obligations of the members of the Board because such members are officers of, or in any way associated with any employer, the NYSA, or the Union, it being understood that each of the members of the Board designated as a representative either of the employers or the Union acts as a representative in a statutory sense only and not as agent of any person, firm, corporation or organization.

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Section 9. The Board may delegate any of its ministerial powers or duties to any agent or employee engaged by the Board or to any one or more of the members of the Board.

Section 10. All decisions of the Board, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding.

ARTICLE VIII—INTERNAL REVENUE DEPARTMENT APPROVAL

This Plan is contingent upon and subject to obtaining and retaining of such approval of the Commissioner of Internal Revenue as may be necessary to establish the Plan as a qualified plan qualifying for exemption from taxation under Section 401 (a) and 501 (a) of the 1954 Internal Revenue Code or any other applicable Section of the Federal Tax Laws (as such Sections are now in effect or are hereafter amended or adopted) and entitling all contributing employers to deduction for contributions under Section 404 of the 1954 Internal Revenue Code or any other applicable Section of the Federal Tax Laws (as such Sections are now in effect or are hereafter amended or adopted.)

In the event that any revision in the Plan is necessary to obtain or maintain such approval, the Board (which shall have such authority even through the approval referred to above shall not have been obtained), is authorized to make such changes, retroactively if necessary, as will enable the Plan to receive or retain such approval, adhering as closely as possible to the intent of the NYSA and the ILA as expressed in the Plan.

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ARTICLE IX—AMENDMENT AND DURATION OF PLAN

Section 1. After December 31, 1951, and each successive year thereafter, the Board shall have authority to review all of the provisions of the Plan, except such as are herein specifically excluded from review, and to make such changes, modifications, and amendments as the Board shall deem desirable. For a period of three (3) years from October 1, 1959, no review shall be had of the amount of employer contributions into the Fund, nor of the minimum eligibility requirement of an average of 700 hours of employment in the industry per year, wherever such requirement appears in the Plan as of October 1, 1959.

Section 2. This Plan is adopted pursuant to the several collective agreements between the employer-members of the NYSA and the ILA, which became effective October 1, 1949. The pertinent provision of those agreements reads as follows:

The establishment of a Pension Plan for employees covered by this agreement agreed to in principle, the details of which are to be developed by a Joint Committee of the Employers and the Union, under the following conditions: (1) The employers are to contribute five (5¢) cents per hour, commencing January 1, 1950, and (2) No change is to be made in the hourly rate to be contributed by the employers for a period of five years, during which period of time each of the parties agrees to waive its right to bargain with respect to the Plan and, further, agrees not to resort to a strike, lockout or other economic force or threat of force to change or add to the Plan.

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Section 3. In the event of termination of the Plan, at which time there is no insured fund in existence as provided in Article IV, Section 8 above, the assets of the Fund and any sums subsequently received by the Fund, shall be disbursed as follows: pension benefits in the amount then prevailing or in such other amount as may be fixed by the Board pursuant to this Plan shall be paid to all pensioners, widows, and persons becoming eligible for benefits, together with administrative expenses as provided in Article VII hereof, until the entire Fund is disbursed. The Board shall continue to process pension applications by employees and widows until the entire Fund is disbursed, and benefit payments shall be made to all persons eligible therefor without distinction as to whether the Board's determination of eligibility was made before or after the decision to terminate the Plan.

ARTICLE X—GOVERNING LAW

This Plan shall be governed, construed, and administered in accordance with the laws of the State of New York and all questions pertaining to it shall be determined in accordance with those laws.

ARTICLE XI—MERGER WITH THE PLAN

Section 1-(a) The United Fruit Company—International Longshoremen's Association Pension Plan having been merged into this Plan, under an agreement dated June 27, 1952, between the Pension Boards and the Boards of Trustees designated under the respective Pension Plans and said agreement having been approved and adopted by the parties hereto and the United Fruit Company, this Plan shall be applicable in all respects: (1) To the United Fruit



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Company which, for this special purpose only, shall be considered and treated as though it were an employer-member of the New York Shipping Association, and (2) To all employees of the United Fruit Company working under the collective agreements between said company and the ILA for the Port of Greater New York and vicinity, including Hatch Foremen, Hatch Bosses, Foremen and Assistant Foremen as though, for this special purpose only, they were employees of employer-members of the NYSA.

(b) On and after the effective date of the merger, this Fund shall assume the obligation to pay pension benefits to all persons now receiving pension benefits under the United Fruit Company—ILA Pension Plan in accordance with the terms and conditions of this Plan.

(c) Employees of the United Fruit Company shall be eligible for pension benefits under this Plan under the same terms and conditions as employees of employer-members of the NYSA. The number of hours worked by such employees during the period from January 1, 1946 until the effective date of the merger shall be determined by the records of the United Fruit Company where such records are available. Where such records are unavailable, the provisions of Article III, Section 3 of the Plan shall govern.

(d) All references in this Article XI to the New York Shipping Association—International Longshoremen's Association Pension Plan and/or NYSA-ILA Pension Trust Fund shall include this Plan, any Agreement of Trust pertaining thereto and any Pension Trust Fund, as any or all of them may be amended or changed from time to time.

(e) The addition of this Article XI, Section 1, shall not be deemed to require any change or modification in the

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administration of this Plan or in any rules or regulations relating thereto.

Section 2-(a) The Harbor Carriers of the Port of New York-International Longshoremen's Association Pension Plan having been merged into this Plan, under an agreement dated June 30, 1953, between the Pension Boards and the Boards of Trustees designated under the respective Pension Plans and said agreement having been approved and adopted by the parties hereto, the Harbor Carriers of the Port of New York and the participating employers in the Harbor Carriers of the Port of New York-International Longshoremen's Association Pension Plan, this Plan shall be applicable in all respects: (1) To the American Lighterage Corporation, Hickey Stevedoring Co., Inc., Lee & Simmons, Inc., Manhattan Lighterage Corporation, New York Foreign Trade Zone Operators, Inc., Peterson Lighterage and Towing Corporation, Pontin Lighterage and Transportation Corp., Wm. Spencer and Sons Corporation, and Waterfront Contracting & Lighterage Co. which, for this special purpose only, shall be considered and treated as though they were employer-members of the New York Shipping Association, and (2) To all employees of the aforementioned companies performing Chenango labor under the collective agreements between said companies and the ILA for the Port of Greater New York and Vicinity, including Foremen, Assistant Foremen, and District Foremen, as though for this special purpose only, they were employees of employer-members of the NYSA.

(b) On and after the effective date of the merger, this Fund shall assume the obligation to pay pension benefits to all persons now receiving pension benefits under the Harbor Carriers of the Port of New York-ILA Pension Plan in accordance with the terms and conditions of this Plan.

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(c) Employees of the companies set forth in (a) (1) above, shall be eligible for pension benefits under this Plan under the same terms and conditions as employees of employer-members of the NYSA. The number of hours worked by such employees during the period from January 1, 1946 until the effective date of the merger shall be determined by the records of the said companies where such records are available. Where such records are unavailable, the provisions of Article III, Section 3 of the Plan shall govern.

(d) All references in this Article XI to the New York Shipping Association-International Longshoremen's Association Pension Plan and/or NYSA-ILA Pension Trust Fund, shall include this Plan, any Agreement or Trust pertaining thereto and any Pension Trust Fund, as any or all of them may be amended or changed from time to time.

(e) The addition of this Article XI, Section 2, shall not be deemed to require any change or modification in the administration of this Plan or in any rules or regulations relating thereto.

Section 3-(a) In the event any employer, not a participating employer in this Plan as of November 22, 1955, desires to become such a participating employer (either through becoming an employer-member of the NYSA or otherwise) and is accepted as such by the Board, then this Plan shall be applicable in all respects: (1) To such employer which, for the purposes of this Plan, shall be considered and treated as though it were an employer-member of the New York Shipping Association, and (2) To all employees of such employer in the classifications of labor agreed to be covered by this Plan, as though for the purposes of this Plan, they were employees of employer-members of the NYSA.

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(b) No employee of any employer referred to in (a) above shall be eligible for pension benefits until contributions to the Fund, at the same rate as are made by employer-members of the NYSA for equivalent periods, are made by said employer for all employees in the covered classifications of labor for a period of not less than five consecutive years. Said employer shall have the right to pay such contribution into the Fund: (1) In a lump sum for all of said five-year period, or (2) in a lump sum for any part of said five-year period, and in the same manner as contributions are made by employer-members of the NYSA for the remaining part of said five-year period, or (3) by commencing such payments as of the date that it becomes a participating employer herein in the same manner as contributions are made by employer-members of the NYSA. Upon the making of contributions for such five-year period, employees of such employer shall be eligible for pension benefits under this Plan under the same terms and conditions as employees of employer-members of the NYSA. Upon completion of said five-year period, the employer shall continue to make contributions to the Fund for all of its employees covered by this Plan in the same manner as contributions are made by employer-members of the NYSA.

An employee may be eligible for pension benefits on the basis of hours worked for said employer prior to receipt by the Fund of contributions from said employer for a period of not less than five consecutive years, provided that contributions to the Fund have been made on his behalf by any participating employer for at least 400 hours a year for a period of not less than five years.

(c) All references in this Article XI to the New York Shipping Association-International Longshoremen's Association Pension Plan and/or NYSA-ILA Pension Trust



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Fund shall include this Plan, any Agreement of Trust pertaining thereto and any Pension Trust Fund, as any or all of them may be amended or changed from time to time.

(d) The addition of this Article XI, Section 3, shall not be deemed to require any change or modification in the administration of this Plan or in any rules or regulations relating thereto.

Section 4. Persons who worked on the waterfront of the Port of Greater New York and vicinity in rendering public loading services prior to December 1, 1953, and who subsequent thereto were employed in the industry by one or more employer-members of the NYSA shall receive credit for hours worked in public loading prior to December 1, 1953 as though, for the purposes of this Plan, they were then employees of employer-members of the NYSA. Upon applying for pension benefits, such persons shall present proof to the Board of the number of hours so worked prior to December 1, 1953, the Board to be the sole judge of the sufficiency of such proof. No applicant whose eligibility for a pension is dependent upon the provisions of this Section 4 shall be eligible for pension benefits prior to December 1, 1958 and unless and until contributions to the Fund have been made on his behalf for at least 400 hours a year for a period of not less than (5) calendar years, unless such contributions have been made for an average of at least 700 hours a year from the first such year of contributions until the year in which his application is made and unless his eligibility is established, in all other respects, under the same terms and conditions as employees of employer-members of the NYSA. IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

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RULES AND REGULATIONS OF THE NYSA-ILA PENSION PLAN

1. All applications for pensions shall be made on standard application forms to be issued and approved by the Board. Application forms shall be available to applicants at the office of the Pension Director, ILA, at 17 Battery Place, New York, N.Y. 10004.

2. In addition to furnishing the information called for on the application form and/or upon request by the Board, each applicant for a pension due to permanent and total disability shall be examined by a physician or physicians selected by the Board. Such an applicant shall be considered eligible for a pension only if the report submitted by the examining physician certifies that as a result of the examination by such physician it is his opinion that the applicant is permanently and totally disabled.

3. An applicant who wilfully makes or causes to be made a false statement of a material fact in connection with his application for pension benefits may, in the discretion of the Board, be forever denied such pension benefits. If the false statement is discovered after payment of pension benefits has begun, then further payments shall be discontinued and the Board shall have the right to recover payments therefore made, by suit or otherwise.

4. Persons who desire to apply for a retirement pension because of age may file their applications within four months of their reaching their 62nd birthday or at any time thereafter.

5. Applicants shall provide such proof or supporting data of the statements made in the application or of any other facts as the Board shall require.

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6. Applicants shall appear in person before the Board or any persons designated by the Board whenever requested to do so.
7. All pension checks must be endorsed personally by the payee. If the payee uses his mark in place of his signature as an endorsement, the payee shall be required to have his mark witnessed by a person whose signature is placed on file with the Board. The Board shall have the right to withhold sending further checks at any time that, in the opinion of the Board, there is any evidence that the signature referred to above are irregular, and such right shall continue for as long as may be necessary for the Board to investigate the facts and ascertain that no wrongful acts have been committed.
8. Any change in the amount of monthly pension benefits, pursuant to Article IV, Section 7 of the Plan, shall be made by the Board only after actuarial consultation and on the basis of an actuarial report.
9. Whenever a pensioner changes his address, he must immediately so notify the Board, in writing, supplying his correct new address.
10. In the event that any pensioner changes his residence from the United States to a foreign country where in the judgment of the Board of Trustees, the character of the government and the prevailing internal conditions are such that it is unlikely that the said pensioner will actually receive his pension benefits, then the Board shall have the right to suspend the payment of pension benefits to the said pensioner while he remains in such a country.
11. An application for a pension filed during the months of January or February of each year need not be proc-

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essed during those months if the work record of the previous calendar year is material thereto; but when not so processed, such an application, if approved, shall then be deemed approved on the date the Board shall determine that the applicant has presented to the processing agency of the Board all information, documents and proof which it is within his power to produce and present, and the Board shall fix the time of payment of monthly pension benefits to such applicant as of the first day of the month following such date.

12. Amendments to these Rules and Regulations shall be made by the affirmative vote of not less than a majority of the members of the Board.



**Exhibit C, Minutes March 28, 1973, Annexed to  
Foregoing Affidavit.**

**NYSA-ILA PENSION TRUST FUND**

80 Broad Street  
New York, N. Y. 10004

(212) 943-2740

17 Battery Place  
New York, N. Y. 10004

(212) 269-7875

MINUTES of a REGULAR MEETING of the BOARD OF TRUSTEES  
of the NYSA-ILA PENSION TRUST FUND held in the offices  
of the New York Shipping Association, Inc., on WEDNESDAY,  
MARCH 28, 1973 at 10:30 A.M.

**BOARD MEMBERS PRESENT**

*N.Y.S.A.*

Messrs. J. J. Dickman,  
Co-Chairman  
E. J. Carroll  
R. F. Chiarello  
James G. Costello  
J. J. Farrell, Jr.  
M. R. McEvoy  
J. F. McGoldrick  
F. X. McQuade  
R. W. Neitz  
D. J. Schmidt

\* (not present)

*I.L.A.*

Messrs. T. W. Gleason, Sr.  
Co-Chairman  
John Bowers  
Vincent Colucci  
\* F. R. Field, Jr.  
L. Gardner  
William Lynch  
William Murphy  
\* A. M. Scotto  
\* Walter L. Sullivan  
J. Vincenzino

\* (not present)

*Exhibit C, Minutes March 28, 1973, Annexed to  
Foregoing Affidavit.*

*Others Present by Invitation Others Present by Invitation*

C. P. Lambos, Esq.

T. W. Gleason, Jr.  
Esq.

Co-Counsel  
Howard Stengel,  
Manufacturers  
Hanover Trust  
Co.

Co-Counsel  
Paul Doyle,  
Manufacturers  
Hanover Trust  
Co.

John T. Haugen, Treasurer

MR. T. W. GLEASON, SR., in the Chair

The meeting of the Board of Trustees of the NYSA-ILA Pension Trust Fund convened at 10:30 A.M.

The Trustees welcomed Messrs. Stengel and Doyle, to consider the Fund's rate of return.

*Min. 5* Co-Counsel reported that in accordance with the instructions of the Pension Trustees, an Agreement had now been entered into with United Fruit Company (United Brands) in which they had sent checks in the amount of \$17,525.00, \$16,351.00 and \$17,395.00 for Pasquale Gusmai, Frank Muscara and Frank Andrews respectively. These individuals will be eligible to receive pension benefits from the NYSA-ILA Pension Plan effective April 1, 1973.

Messrs. Gusmai, Muscara and Andrews will cease to receive further benefits from United Fruit Company.

Co-Counsel pointed out that in principle, this matter had already been approved by the Board. The Board ratified the action of Co-Counsel.

*Min. 6* The Trustees noted for the record the Fund's financial report—Cash and Investment—January 31, 1973 and Statement of Cash Receipts and Disbursements for the month of January 31, 1973. (Copies attached hereto and made a part hereof.)

*Exhibit C, Minutes March 28, 1973, Annexed to  
Foregoing Affidavit.*

*Min. 7* Reference is made to Minute 21 of the Sub-Committee meeting held on March 15, 1973 concerning disability pension application from

John Cuff—Social Security No. 067-09-4743 which was tabled at that time until such time as a break-in-service maximum is established.

In reviewing Mr. Cuff's case it was reported that his Waterfront Pass was taken away from him, not because of any wrong doing but because of decasualization. However, the break-in-service provision was never extended to decasualization.

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That as based on the Rules, Mr. Cuff's application for disability pension benefits be denied.

*Min. 8* Reference is made to Minute 19 of the Sub-Committee meeting held on March 15, 1973 regarding

Arthur Reilly—Social Security No. 133-09-8550 request for re-instatement and return to work which was tabled at that time pending referral to the Medical Center for re-examination.

It was reported that Mr. Reilly, after re-examination, was found to be not disabled.

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That Mr. Reilly's request for re-instatement and return to work be denied, and  
it was further

RESOLVED: That any individual who goes out on disability pension cannot return to the industry.

**Exhibit D, Minutes June 26, 1973, Annexed to  
Foregoing Affidavit.**

**NYSA-ILA PENSION TRUST FUND**

80 Broad Street  
New York, N.Y. 10004

—  
(212) 943-2740

17 Battery Place  
New York, N.Y. 10004

—  
(212) 269-7875

MINUTES of MEETING of the NYSA-ILA CONTRACT BOARD'S  
SUB-COMMITTEE of the PENSION TRUST FUND held on TUES-  
DAY, JUNE 26, 1973, at the Contract Board Office, 80 Broad  
Street, New York, N.Y. 10004, (12th Floor) at 9:30 A.M.

**MEMBERS PRESENT**

Messrs. E. J. Carroll  
\*R. F. Chiarello  
J. F. McGoldrick  
\*D. J. Schmidt  
\* (not present)

Messrs. John Bowers  
Lester Gardner  
A. M. Scotto

C. P. Lambos, Esq.  
Co-Counsel

Julius Miller, Esq.  
Co-Counsel

*Others Present by Invitation*

Messrs. B. DiMattina  
A. Aurigemma  
T. Rubino



*Exhibit D, Minutes June 26, 1973, Annexed to  
Foregoing Affidavit.*

The meeting convened at 9:30 A.M.

*Min. 1* There were submitted for consideration five (5), eight (8) one (1) and five (5) applications for pension benefits as of June 5, 12, 18 and 21, 1973 respectively, all of which had been processed previously and found in order by the authorized representatives of the NYSA-ILA Pension Trust Fund.

After discussion, upon motion duly made, seconded and unanimously carried, it was

During the discussion which followed, it was noted that Mr. Nikolaj's Death Certificate does indicate Mrs. Mary Nikolaj to be the beneficiary.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That Mrs. Mary Nikolaj's request for a widow's pension is hereby approved.

*Min. 21* Reference is made to Minutes 17, 14, 21 and 32 of the meetings held October 18 and December 19, 1972 and March 15 and May 29, 1973, respectively, in relation to application for pension from

John Cuff—S.S. #067-09-4743

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That Mr. Cuff is eligible for a vested right pension payable at the current rate, on his attaining age 62 years; and

it was further

*Exhibit D, Minutes June 26, 1973, Annexed to  
Foregoing Affidavit.*

RESOLVED: That the 25-years formula is not applicable to Disability Pensions.

*Min. 22* During a lengthy discussion concerning pension application for

Matthew English—S.S. #109-18-6261

it was noted that applicant had been denied on the basis he did not return to the industry. (Ref. Mins. 24 and 20—January 18 and March 15, 1973.)

**Notice of Cross-Motion.**

SIRS:

PLEASE TAKE NOTICE that upon the motion of the defendants seeking summary judgment, and upon all of the pleadings and proceedings heretofore had herein, plaintiff will cross-move this Court, at the Court House located at 225 Cadman Plaza East, Brooklyn, New York, on the 11th day of June 1974, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, for summary judgment in favor of plaintiff pursuant to Rule 56 of the Federal Rules of Civil Practice and for declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Practice, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York, May 14, 1974.

Yours, etc.,

MELTZER & FISHMAN  
Attorneys for Plaintiff

By: STANLEY F. MELTZER  
Stanley F. Meltzer,  
A Member of the Firm

To:

THOMAS W. GLEASON, Esq.  
Attorney for Defendants

LORENZ, FINN, GIARDINO & LAMBOS, Esqs.  
Attorneys for Defendants

**Supplemental Affidavit of Anthony Aurigemma to  
Defendant's Motion to Dismiss Complaint and  
Motion for Summary Judgment and in Opposi-  
tion to Plaintiff's Cross-Motion for Summary  
Judgment.**

STATE OF FLORIDA }  
COUNTY OF DADE } ss.:

ANTHONY AURIGEMMA, being duly sworn, deposes and says:

1. This affidavit is submitted as a supplement to my affidavit dated April 29, 1974 in support of Defendants' Motions made pursuant to Federal Rules of Civil Procedure 12(b)(6) and 56 on the grounds that Plaintiff has failed to state a claim upon which relief can be granted, in that:

- A. He was not eligible to receive disability pension under the provisions of the NYSA-ILA Pension Plan ("Plan" or "Fund", Ex. B, attached to my affidavit dated April 29, 1974; and
- B. The Board of Trustees, pursuant to the powers granted them by the Plan, rendered a "conclusive final and binding" decision denying his application for a disability pension.

2. The Board of Trustees, after several hearings and an exhaustive review of all the evidence submitted by Plaintiff, at a meeting held on March 28, 1973, resolved that:

- A. His application be denied because he failed to meet the eligibility requirements for a disability pension (Ex. I); and subsequently at a meeting held on June 26, 1973 resolved that
- B. Plaintiff had a vested right to receive a normal retirement pension upon reaching age 62, (Ex. II).



*Supplemental Affidavit of Anthony Aurigemma to Defendant's Motion to Dismiss Complaint and Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment.*

The eligibility requirements for a normal retirement pension are substantially and significantly different than those for a disability pension.

3. That these decisions were "conclusive, final and binding" is beyond question. That power is granted by Article VII, Section 10, page 38 of the Plan. (Ex. B, attached to my affidavit dated April 29, 1974).

4. That these decisions were made strictly in accordance with the Plan's provisions and were supported by substantial evidence is beyond dispute as is hereinafter established.

5. It is important to note that Plaintiff has not submitted any affidavit in opposition to Defendants' Motions. Nor has he submitted any papers in support of his Cross-Motion for Summary Judgment. Instead, he relies solely upon a Memorandum of Law in which he:

- A. ignores the provisions of the Plan conclusively establishing his ineligibility for a disability pension;
- B. makes a significant misstatement of fact; and
- C. makes a blatant, unsupported assertion that the decision of denial by the Board of Trustees, (*supra*, ¶ 2(A)) was arbitrary and capricious.

6. In order for an employee to be eligible for a disability pension, the Plan provides, in pertinent part, that:

"Any employee who is forty (40) years or older on or after January 1, 1950, who has been employed in the industry for a *continuous* period of not less than

*Supplemental Affidavit of Anthony Aurigemma to Defendant's Motion to Dismiss Complaint and Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment.*

fifteen (15) years, and who during such *continuous* period has been employed in the industry a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being employed in the industry at the time he sustains such disability, shall be entitled to a pension." (Emphasis added) (Ex. B to affidavit dated April 29, 1974, Article III, Section 7, pp. 16-17).

7. Article III, Section 2 (Ex. B to affidavit dated April 29, 1974, p. 8) of the Plan provides that:

*"Employment in the industry shall be deemed to have terminated and shall no longer be considered continuous when the employee has worked in the industry less than 400 hours a year for more than two (2) calendar years. . . ."* (Emphasis added).

(It is undisputed that the exceptions contained in the remainder of this Section are inapplicable to Plaintiff's claim).

8. Plaintiff applied for a disability pension in May, 1972. As of that date he had only seven (7) continuous years of employment in the industry, 1966 through 1972—not fifteen (15) as required for a disability pension (Exhibit III, Plaintiff's official work record maintained by the Pension Trust Fund).

9. A review of Plaintiff's work record (Exhibit III) establishes that he was employed in the longshore industry from 1937 through 1955.

10. Thereafter, he *terminated his employment in the longshore industry* voluntarily by working outside of this

*Supplemental Affidavit of Anthony Aurigemma to Defendant's Motion to Dismiss Complaint and Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment.*

industry from 1956 through 1963 (Ex. III). This *termination* occurred in accordance with the express language of the Plan—Article III, Section 2 (*supra*, ¶ 7). This termination of employment in the industry wiped out and nullified his credited service towards a *disability pension* which he had acquired during the years 1937 through 1955.

11. Contrary to his statement contained in the footnote at page 4 of his Memorandum of Law, he voluntarily quit the longshore industry. He *voluntarily* withdrew his registration with the Waterfront Commission of New York Harbor—such registration being a prerequisite to employment in this industry in the Port of Greater New York Vicinity (Rules and Regulations of the Waterfront Commission of New York Harbor, Part 4, Section 4.1, et. seq.).

12. His voluntary withdrawal is conclusively established by the letter from the Waterfront Commission of New York Harbor, dated May 24, 1974, addressed to Richard P. Lerner, Esq., an associate with the firm of Lorenz, Finn, Giardino, and Lambos, Co-Counsel to the Plan, (Ex. IV).

13. In 1964, Plaintiff returned to the longshore industry. However, he failed to work at least 400 hours, the minimum required by the Plan to receive credit for that year towards a pension. The same is true for the year 1965, (Ex. III).

14. During the period 1966 through 1972 Plaintiff worked more than the minimum number of hours required (Ex. III).

*Supplemental Affidavit of Anthony Aurigemma to Defendant's Motion to Dismiss Complaint and Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment.*

15. Having terminated his employment in the longshore industry (*supra*, ¶ 10), Plaintiff would not have been entitled to any pension based upon his employment in the industry from 1966 through 1972. Fortunately for him, however, the normal retirement provision of the Plan (Ex. B, Article III, Section 1(c)(ii)(a)(b), p. 7-8) was amended, effective January 1, 1972, which amendment made him eligible to receive a pension upon reaching age 62. This amendment permits the grant of a normal retirement pension to individuals whose employment in the industry had previously been terminated, so long as at the time of application for pension the individual had twenty-five (25) years of employment in the industry—of which five (5) must be continuous years of employment at the time of his application.

16. As the language clearly establishes (Ex. B, Article III, Section 1(c)(ii)(a)(b)), this amendment *for normal retirement pension purposes only*, effectively did away with the termination of employment provisions. Prior to this amendment, such provisions would have rendered Plaintiff ineligible for any pension under the provisions of the Plan. This amendment in no way affected the requirements for a disability pension.

17. Thus, in May 1972, when Plaintiff applied for a disability pension under the Plan's provisions, he had *only seven (7)* continuous years of employment in the industry, for this type of pension.

18. During my seventeen (17) years as Pension Director of the NYSA-ILA Pension Plan, no similarly situated employee has ever been granted a disability pension. Furthermore, a review of the records of the Plan establishes that such is the case since the Plan's inception.



*Supplemental Affidavit of Anthony Aurigemma to Defendant's Motion to Dismiss Complaint and Motion for Summary Judgment and in Opposition to Plaintiff's Cross-Motion for Summary Judgment.*

19. Clearly, in light of the foregoing, Plaintiff's contention that the decision of the Board of Trustees was arbitrary and capricious, is totally without merit.

20. Of equal importance, should Plaintiff's unfounded claim be upheld, the floodgates would be opened up and the actuarial soundness of the Plan could be severely undermined. Many hundreds of similarly situated individuals could become entitled to a disability pension, contrary to the clear and unambiguous language of the Plan.

21. It is not inconceivable that the Fund in such circumstances could be bankrupted. Thus, depriving present pensioners and widow's receiving widow's benefits as well as active employees with a vested right to a pension and employees with a substantial number of years with credited service towards a pension from ever receiving their benefits.

22. It is respectfully submitted:

1) That the denial of Plaintiff's application for a disability pension was based solely on the fact that he was not eligible under the provisions of the Plan and accordingly, such denial was not arbitrary and capricious; and

2) The decision of the Board of Trustees is conclusive, final, and binding upon the Plaintiff.

WHEREFORE it is respectfully submitted that Defendants' Motions to Dismiss the Summons and Complaint and Motion for Summary Judgment be granted in all respects and that Plaintiff's Cross-Motion for Summary Judgment be denied.

(Sworn to by Anthony Aurigemma, June 19, 1974.)

**Exhibit "I", Resolution, Annexed to  
Foregoing Affidavit.**

In reviewing Mr. Cuff's case it was reported that his Waterfront Pass was taken away from him, not because of any wrong doing but because of decasualization. However, the break-in-service provision was never extended to decasualization.

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That as based on the Rules, Mr. Cuff's application for disability pension benefits be denied.

*Min. 8* Reference is made to Minute 19 of the Subcommittee meeting held on March 15, 1973 regarding

Arthur Reilly—Social Security No. 133-09-8550 request for re-instatement and return to work which was tabled at that time pending referral to the Medical Center for re-examination.

It was reported that Mr. Reilly, after re-examination, was found to be not disabled

After discussion, upon motion duly made, seconded and unanimously carried, it was

RESOLVED: That Mr. Reilly's request for re-instatement and return to work be denied, and

it was further

RESOLVED: That any individual who goes out on disability pension cannot return to the industry.

**Exhibit "II", Resolution, Annexed to  
Foregoing Affidavit.**

During the discussion which followed, it was noted that Mr. Nikolaj's Death Certificate does indicate Mrs. Mary Nikolaj to be the beneficiary.

Upon motion duly made, seconded and unanimously carried, it was

**RESOLVED:** That Mrs. Mary Nikolaj's request for a widow's pension is hereby approved.

*Min. 21* Reference is made to Minutes 17, 14, 21 and 32 of the meetings held October 18 and December 19, 1972 and March 15 and May 29, 1973 respectively, in relation to application for pension from

John Cuff—S.S. #067-09-4743

After discussion, upon motion duly made, seconded and unanimously carried, it was

**RESOLVED:** That Mr. Cuff is eligible for a vested right pension payable at the current rate, on his attaining age 62 years; and

it was further

**RESOLVED:** That the 25-years formula is not applicable to Disability Pensions.

*Min. 22* During a lengthy discussion concerning pension application for

Matthew English—S.S. #109-18-6261

it was noted that applicant had been denied on the basis he did not return to the industry. (Ref. Mins. 24 and 20—January 18 and March 15, 1973.)

**Exhibit "III", Wage Report, Annexed to  
Foregoing Affidavit.**

NYSa—ILA PENSION TRUST FUND

067-09-4743

SOCIAL SECURITY NUMBER

Cuff, John E.  
NAME

|      | HOURS |          | NON-MEMBERS                            |
|------|-------|----------|--|
|      |       |          | N.Y.C.                                 |
| 1937 | —     | \$863.00 | J. H. Schroeder<br>F. Loeser & Co.     |
| 1938 | 117   | \$171.00 | J. H. Schroeder<br>Refreshment at Fair |
| 1939 | 27    | \$435.00 | Wilmington, Del.<br>S. J. Daily        |
| 1940 | 304   | \$14.00  | Tarrytown, N.Y.<br>W. R. Boyce & Son   |
| 1941 | 18    | \$522.00 | N.Y.C.<br>Motor Haulage                |
| 1942 | 109   | \$1,386. | Brooklyn, N.Y.                         |
| 1943 | —     | \$41.00  | " "                                    |
| 1944 | 14    | —        |  |
| 1945 | N     | —        | Motor Haulage                          |
| 1946 | —     | \$1,967. | Brooklyn, N.Y.                         |
| 1947 | —     | \$3,000. | " "                                    |
| 1948 | 565   | \$884.00 | " "                                    |



*Exhibit "III", Wage Report, Annexed to  
Foregoing Affidavit.*

|      | HOURS |          | NON-MEMBERS           |
|------|-------|----------|-----------------------|
| 1949 | 2,057 | —        |                       |
| 1950 | 2,534 |          |                       |
| 1951 | 2,584 |          |                       |
| 1952 | 1,755 |          |                       |
| 1953 | 1,991 |          |                       |
| 1954 | 2,183 |          |                       |
| 1955 | 1,923 |          |                       |
|      |       |          | Daniel F. Young, Inc. |
| 1956 | —     | \$2,000. | N.Y.C.                |
| 1957 | —     | \$42.00  | "                     |
| 1958 | —     | \$42.00  | "                     |
| 1959 | —     | \$48.00  | "                     |
| 1960 | —     | \$48.00  | "                     |
| 1961 | —     | \$48.00  | "                     |
| 1962 | —     | \$5,033. | "                     |
| 1963 | —     | \$48.00  | "                     |
| 1964 | 333   | \$3,950. | Isthman Lines<br>Rep. |
| 1965 | 224   | \$4.00   | " "                   |
| 1966 | 2,322 |          |                       |
| 1967 | 2,522 |          |                       |
| 1968 | 2,286 |          |                       |
| 1969 | 2,078 |          |                       |

*Exhibit "IIP", Wage Report, Annexed to  
Foregoing Affidavit.*

|      |     |     |
|------|-----|-----|
| 1970 | 960 | GAI |
|------|-----|-----|

|  |  |     |
|--|--|-----|
|  |  | 12  |
|  |  | GAI |

|      |     |      |
|------|-----|------|
| 1971 | 272 | 1108 |
|      |     | GAI  |

|      |  |                  |
|------|--|------------------|
| 1972 |  | & A.&H. 500 Hrs. |
|------|--|------------------|

|      |  |  |
|------|--|--|
| 1973 |  |  |
|------|--|--|

|      |  |  |
|------|--|--|
| 1974 |  |  |
|------|--|--|

..... Year Average .....

15 Year Average .....

83a

**Exhibit "IV", Letter, Waterfront Commission,  
Annexed to Foregoing Affidavit.**

(EMBLEM)

WATERFRONT COMMISSION OF NEW YORK HARBOR  
15 Park Row  
New York, N. Y. 10038

---

964-3520

May 24, 1974

Richard P. Lerner, Esq.,  
% Lorenz, Finn, Giardino & Lambos  
25 Broadway  
New York, New York 10004

Re: John Cuff  
S/S #067 09 4743

Dear Mr. Lerner:

In accordance with your request of May 23, 1974, you are advised that a review of Waterfront Commission records indicates that Mr. Cuff was originally issued long-shoreman registration in December, 1953. He voluntarily withdrew his registration on October 1, 1956. He applied for checker registration on April 9, 1958 and was thereafter issued checker registration on April 15, 1958. Mr. Cuff voluntarily withdrew his checker registration on July 15, 1958. He applied for reinstatement after withdrawal on August 6, 1964 and was reinstated on the same date. He was decasualized on April 9, 1973 in Round 2K for failing to meet the work and show up requirements for

84a

*Exhibit "IV", Letter, Waterfront Commission,  
Annexed to Foregoing Affidavit.*

the six month period ending December 31, 1972 and currently remains in a decasualized status.

Very truly yours,

CARMINE A. CARDONE  
CARMINE A. CARDONE  
Director  
Division of Licensing

RECEIVED  
5/29/74

—An Instrumentality of the States of  
New York and New Jersey—



**Statement Pursuant to Rule 9(g).**

The following are material facts as to which the moving party contends there is no genuine issue to be tried:

1. Plaintiff is seeking a disability pension under the provisions of the NYSA-ILA Pension Plan (hereinafter "Plan").

2. Article III, Section 7 of the Plan, in its pertinent part, provides that in order to be eligible to receive a disability pension an individual must be, ". . . employed in the industry for a continuous period of not less than fifteen (15) years . . ." and be employed in the longshore industry at the time he sustains such disability.

3. Employment in the longshore industry is terminated in accordance with Article III, Section 2 of the Plan which provides that:

"Employment in the industry shall be deemed to have terminated and shall no longer be considered continuous when the employee has worked in the industry less than 400 hours a year for more than two (2) calendar years . . ."

4. Plaintiff was employed in the longshore industry from 1937 through 1955.

5. Plaintiff's employment in the longshore industry was terminated in accordance with Article III, Section 2 of the Plan, (supra, ¶3) when he voluntarily worked outside of the industry from 1956 through 1963. During this entire period Plaintiff worked not one hour in the longshore industry.

6. Plaintiff was employed in the longshore industry in 1964 and in 1965. However, he failed to work at least four

*Statement Pursuant to Rule 9(g).*

hundred (400) hours, the minimum required by the Plan to receive credit for these years towards a pension.

7. Plaintiff's termination of employment in the industry (supra, ¶ 5) wiped out and nullified his credited service towards a disability pension.

8. During the period 1966 through 1972 Plaintiff worked more than the minimum number of hours each year to receive credit towards a pension and was credited accordingly.

9. In May, 1972, when Plaintiff applied for a disability pension under the Plan's provisions, he had only seven (7) continuous years of employment in the industry—1966 through 1972—not the required fifteen (15).

10. Plaintiff's application for a disability pension was processed, reviewed and unanimously denied by the Board of Trustees of the Plan.

11. Article VII, Section 10, p. 38 of the Plan provides that:

“All decisions of the Board, including all those made in the interpretation and administration of the Plan, shall be conclusive, final and binding.”

Accordingly, such decision, denying his application for a disability pension is conclusive, final and binding upon Plaintiff.

12. Plaintiff has been treated in the same manner as all similarly situated individuals who have applied for a disability pension since the inception of the Plan in 1950.

13. The decision of the Board of Trustees denying Plaintiff's application was in strict accordance with the provi-

*Statement Pursuant to Rule 9(g).*

sions of the Plan and is conclusive, final and binding upon Plaintiff.

Dated, New York, N.Y., July 10, 1974.

Yours, etc.

LORENZ, FINN, GIARDINO & LAMBOS

By: RICHARD P. LERNER

THOMAS W. GLEASON

By: RICHARD H. KAPP

Attorney's for Defendants

**Opinion.****Appearances:**

MELTZER & FISHMAN, Esqs.  
Attorneys for Plaintiff

THOMAS W. GLEASON, Esq.  
Attorney for Defendant,  
International Longshoremen's  
Association, AFL-CIO

LORENZ, FINN, GIARDINO & LAMBOS, Esqs.  
Attorneys for Defendant,  
New York Shipping Association

BRUCHHAUSEN, D. J.

This is an action wherein the plaintiff seeks disability benefits from the New York Shipping Association-International Longshoremen's Association Pension Trust Fund and Pension Plan.

Both sides move for an order, granting summary judgment in their respective favors.

The facts disclose the plaintiff was employed in the long-shore industry commencing in 1937 through 1955 inclusive. Thereafter from 1956 through 1963 he was not so engaged. He returned to the industry in 1964 and remained there until May 23, 1972 at which time he submitted an application for a disability pension. It is conceded that the plaintiff was totally disabled and qualified for disability benefits if he satisfied certain condition precedents of the pension plan. The Board of Trustees of the pension plan convened on March 28, 1973, and after due deliberation denied the application for disability pension benefits upon the ground that certain conditions of the plan had not been satisfied by the plaintiff. Exhibit C.

This plan was created pursuant to the Taft Hartley Law, 29 U.S.C. 185, more particularly 29 U.S.C. 186.



*Opinion.*

The plaintiff contends that the determination by the Board of Trustees was improper, illegal, arbitrary or capricious, and reviewable by the district court.

The defendant contends that the plaintiff did not satisfy the longevity requirement immediately prior to his application, and that the decision of the Board of Trustees is conclusive, final, binding and not reviewable by a court, if found reasonable and based on substantial evidence.

The plaintiff applied for benefits pursuant to Article III, Section 7 which states:

“Any employee who is forty (40) years or older on or after January 1, 1950, who has been employed in the industry for a continuous period of not less than fifteen (15) years, and who during such continuous period has been employed in the industry for a period of fifteen (15) consecutive years for an average of not less than 700 hours per year, and becomes permanently and totally disabled on or after January 1, 1952, being employed in the industry at the time he sustains such disability, shall be entitled to a pension.”

The defendant argues that when the plaintiff left his employ in 1956 through 1963 it destroyed and nullified his credited service toward a disability pension which he had earned during his continuous service in the industry from 1937 through 1955, approximately eighteen (18) years. Upon his return to the industry in 1964 to May, 1972 he only received credit for approximately seven (7) years service at the time of his application for disability benefits. It is contended by the defendant that an employee must have been employed in the industry for a continuous period of not less than fifteen (15) years immediately prior to his application for such pension. The break in the employment of this plaintiff completely eliminated

*Opinion.*

his prior credit and that he was obliged to commence anew this fifteen (15) year service.

The plaintiff contends that no such interpretation can be read into the provisions of Article III, Section 7. The wording is clear and there is no condition requiring fifteen (15) years of continuous service immediately prior to filing an application for disability benefits.

It is well settled that a district court has the authority to review interpretations by Administrators of union pension funds to determine whether the decisions were arbitrary and capricious. *Lowenstern v. International Association of Machinists and Aerospace Workers, AFL-CIO, et al.*, 479 F. 2d 1211 (D.C.C.C.A.) (1973).

In *Lowenstern*, supra, the Court held in part at page 1213:

"However, even assuming appellant's construction were reasonable, as between two competing interpretations of the Plan, we are bound by that of the Administrators if it is not arbitrary and capricious, *Miniard v. Lewis*, 128 U.S. App. D.C. 299, 387 F.2d 864 (1967), cert. denied, 393 U.S. 873, 89 S. Ct. 166, 21 L.Ed. 144 (1968); see also *Roark v. Lewis*, 130 U.S. App. D.C. 360, 364, 401 F.2d 425, 429 (1968)."

In *Moglia v. Geoghegan*, 267 F. Supp. 641, affirmed 403 F.2d 110 (Cir. 2), cert. denied 394 U.S. 919, the district court held in part at page 645:

"This brings us to the statute and to the extent of the jurisdiction of this Court in the matter. We hold our jurisdiction to be limited to inquiry as to whether there has been a violation of the statute either in its letter or its spirit, and that there does not rest in the Court a general power to dictate, rephrase or interfere with the provisions of an agreement freely entered into between the Union and the Employers for the

*Opinion.*

benefit of the employees, regulating coverage and eligibility, and imposing conditions on both."

The Court, therefore, must inquire as to whether or not the Union reasonably interpreted Article III, Section 7 of the pension plan providing disability benefits to the plaintiff herein. The Court has carefully considered this section and concludes that the position of the plaintiff be sustained and that of the defendant overruled.

The section is perfectly clear and written in precise language. There is no condition written or one that may be implied in Section 7 requiring fifteen (15) years of continuous service, immediately prior to his application for such pension. If the Court were to sustain the position of the defendant, it would in effect rewrite Section 7 by inserting a word or phrase that is simply not contained in Section 7. Therefore, the Court rules that this plaintiff once having been employed continuously for fifteen (15) years earned a vested right in the pension plan. To hold otherwise would fly into the face of the Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5). See *Lavella v. Boyle*, 444 F.2d 910 cert. denied 404 U.S. 850.

The Board of Trustees reading into Section 7 an additional requirement acted arbitrarily, capriciously and unreasonably. Its determination was not fair and reasonable and not supported by substantial evidence. It clearly did not comply with the spirit of the statute.

The motion of the plaintiff is in all respects granted and that of the defendant is in all respects denied.

Settle order on three (3) days' notice.

Copies hereof are being forwarded to the respective attorneys.

WALTER BRUCHHAUS  
Senior U. S. D. J.

**Order and Judgment Appealed From.**

Defendants, having moved this Court by Notice of Motion dated April 30, 1974, for an Order dismissing the complaint and granting summary judgment pursuant to Rule 12(b) and Rule 56 of the Federal Rules of Civil Procedure, and plaintiff having cross-moved for summary judgment and declaratory relief pursuant to Rules 56 and 57 of the Federal Rules of Civil Procedure, and the said motions having duly come on to be heard on the 2nd day of August 1974, and the plaintiff having submitted in support of his motion, by Meltzer & Fishman, Esqs., his attorneys, and the defendants having submitted in support of their motion and in opposition to the plaintiff's motion by Thomas W. Gleason, Esq. and Lorenz, Finn, Giardine and Lambos, Esqs., their attorneys, and the Court having had due deliberation herein and the Court having rendered its decision, in writing, on the 16th day of October, 1974.

Now, on motion of Meltzer & Fishman, attorneys for the plaintiff, it is

ORDERED AND ADJUDGED that the motion of the defendants be and the same hereby is denied in all respects, and it is further

ORDERED AND ADJUDGED that plaintiff's motion pursuant to Rule 56 of the Federal Rules of Civil Procedure be and the same hereby is granted in all respects, and it is further

ORDERED AND ADJUDGED that the plaintiff have and he hereby is granted judgment against the defendants for the relief sought herein, to wit: That plaintiff is entitled to disability benefits from defendants' pension plan at the rate of \$400.00 per month commencing September 1, 1972, for a total amount through and including October 1, 1974, of \$10,400.00 with interest of \$702.00, for a total of \$11,102.00,



*Order and Judgment Appealed From.*

together with costs and disbursements of this action to be taxed by the Clerk of this Court in the amount of \$20.00, for a total of \$11,122.00, and it is further

ORDERED AND ADJUDGED that the defendants be and they hereby are directed to pay said amount to plaintiff forthwith, and are further directed to pay to the plaintiff commencing as of November 1, 1974, the present monthly disability entitlement of \$400.00 per month, and it is further

ORDERED AND ADJUDGED that in the event the defendants wish to stay the execution and payment of the within judgment, they shall, within ten (10) days of the entry of judgment herein, file with the Clerk of this Court, a surety bond with a company acceptable to the Court herein, in the sum of \$15,000.00, in which event execution of the within judgment shall be stayed until the further order of this Court or any other Court of competent jurisdiction.

Dated, October 29, 1974.

ENTER:

s/ WALTER BRUCHHAUSEN  
Senior U.S.D.J.



1/3/75 - And one copy

Q. B. J. in